

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

**Before Shri Rama Kanta Panda, Accountant Member**

*AND*

**Shri K.Narasimha Chary, Judicial Member**

ITA No.236/Hyd/2021		
Assessment Year: 2015-16		
HI-TECH Electricals H.No.1-9-329 Flat No.402, P.K.Mansion Vidyanagar Hyderabad-500 044  PAN : AAFFH6999G	Vs.	ITO, Ward-4(2) I.T.Towers A.C.Guards, Masab Tank Hyderabad
(Appellant)		(Respondent)
Assessee by:		Ms. Sandhya, Advocate
Revenue by:		Shri M.Vijay Kumar, CIT-DR
Date of hearing:		13.10.2022
Date of pronouncement:		14.10.2022

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the assessee is directed against the order dated 26.02.2020 passed u/s. 263 of the I.T.Act,1961 by the of Learned Principal Commissioner of Income Tax (Appeals)-1, Hyderabad relating to AY 2015-16.

2. There is a delay of '416' days in filing of this appeal by the assessee for which the assessee has filed a condonation application explaining the reasons for such delay which is due to the pandemic. The ld. Counsel for the assessee referring to the decision of Hon'ble Supreme Court in the case of suo moto writ petition vide order dated 10.01.2022 in M.A.No 21 of 2022 and in M.A.665 of 2021 in suo moto writ petition (c) No. 3 of 2020 where it has been directed to exclude the period from 05.03.2020 till 20.02.2022 for the purpose of limitation submitted that the delay being due to the pandemic, the same should be condoned and the

appeal be admitted. After hearing both the sides the delay in filing of this appeal filed by the assessee is condoned and the appeal is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of laying underground electrical lines. It filed its return of income on 15.03.2017 declaring total income of Rs.10,32,400,-. The return was processed u/s. 143(1) on 12.07.2017. Subsequently, the case was selected for scrutiny under CASS to verify “ receipt u/s. 194C and 194J (as per 26 AS) which are more than the receipts shown in the ITR.” Accordingly, notice u/s.143(2) of the Act was served on the assessee on 25.09.2017. After considering the details filed by the assessee, the AO completed the assessment accepting the returned income of Rs.10,32,400/-.

4. Subsequently, the ld.PCIT called for the records and noted that the case was selected for scrutiny to verify whether the contract receipts/fees were correctly offered to tax. However, although the assessee has received total gross receipt of Rs.3,85,80,378/- as per 26AS, however assessee has declared the gross receipts at Rs.1,83,90,480/- only leaving a difference of Rs.2,01,89,898/-. He noted that as per agreement with RR Durafabs (Pvt.) Ltd. the assessee has continued the sub-contract work on behalf of RR Durafabs (Pvt.) Ltd. w.e.f. 22.01.2015 and completed the same. Further, as per Form 26AS for the A.Y. 2015-16, the value of work done by M/s. Hi Tech Electricals for M/s. ILJIN Electric Co.Ltd is Rs.3,80,70,174/- against which TDS of Rs.7,61,404/- was made. Hence, the entire gross receipts ought to have been declared in the hands of the assessee as per 26AS. This claim of deduction was allowed by AO without proper verification/examination.

5. He was of the opinion that although, there was huge difference in the gross receipts shown in the 26AS and as declared in the P&L account, however the AO failed to examine the same leading to loss of revenue. He therefore issued a show cause notice u/s. 263 of the I.T.Act to the assessee to explain as to why the order passed by the AO should not be set aside. Rejecting the various explanations given by the assessee, he held that order passed by the AO is erroneous and prejudicial to the interest of the revenue. He therefore set aside the order passed by the AO and restored the same to him to re-do the assessment after examining the issue and after allowing an opportunity being heard to the assessee.

6. Aggrieved with such order of the Ld.PCIT, the assessee is in appeal before the Tribunal by raising the following grounds.

*1) The order of the learned Principal Commissioner of Income Tax is erroneous both on facts and in law*

*2) The learned Principal Commissioner of Income Tax erred in holding that there is an error in the order u/s 143(3) of the I.T.Act dated 10.11.2017 passed by the Income Tax Officer, Ward-4(2), Hyderabad;*

*3) The learned Principal Commissioner of Income Tax ought to have seen that all the amounts actually received by the appellant are credited to the profit and loss account and that no part of the amount received is excluded from the admission made in the return of income;*

*4) The Assessing Officer during the assessment proceedings considered the books of account, 26AS and the other information available and came to the conclusion that the income admitted of Rs.10,32,400/- is correct.*

*5) The learned Principal Commissioner of Income Tax erred in holding that an amount of RS.2,01,89,898/- representing the contract receipts was not admitted by the appellant without considering the fact that the said amount was never received by the appellant;*

*6) The learned principal commissioner of Income Tax erred in passing the order u/s 263 of the I.T . Act reopening the assessment passed u/s 143(3) dated 10.11.2017 without considering the fact that there is no error in the assessment order passed by the Assessing Officer.*

7. The ld. Counsel for the assessee, at the outset, referring to the assessment order drew the attention of the Bench to page 2 para 3 of the same and submitted that assessee has furnished the copy of the bank statement, 26AS details, books of accounts etc. before the AO who after examining the same accepted the returned income. The assessee has also explained the variation in the TDS. Referring to the copy of the bank account filed at page 9 to 15 of the paper book, she submitted that assessee has received only an amount of Rs.1,83,07,743/- and not Rs.3,85,80,378/- as alleged by the ld.PCIT. She submitted that when the AO after examining the details filed by the assessee has completed the assessment, the same cannot be termed as erroneous. Therefore, the ld.PCIT was not justified in invoking the jurisdiction u/s. 263 of the I.T.Act. Referring to the following decisions, she submitted that no addition can be made to the total income of the assessee on the basis of mis-match in the Form 26AS and income declared as per P&L account.

*i. Dr. Swati Mahesh Vinchurkat vs. DCIT reported in 191 ITD 434 (Suath. Trib)*

*ii. ITO vs. Star consortium (Kol. Trib)*

*iii. Telesource Pvt.ltd. vs. ITO in ITA No.6823/Mum/2013 dated 18.02.2019 (Mum. Trib)*

*iv. Ashoka Construction Company vs ACIT, Mirzapur reported in 188 ITD 896 (Alhabad. Trib)*

*v. Mercury Car Rentals Pvt.Ltd. vs. DCIT in ITA No.1442/Kol/2018 dated 10.04.2019 (Kol.HC)*

8. The ld. DR on the other hand, while supporting the order passed by the Ld.PCIT submitted that the case was selected for scrutiny to verify the receipts u/s. 194C and 194J as per 26AS, which are more than the receipts shown in the ITR. However, the AO failed to examine the same for which the case was selected for scrutiny. Therefore, the order passed by the AO u/s. 143(3) is erroneous as well as prejudicial to the interest of the revenue.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and Id.PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case is a partnership firm engaged in the business of laying underground electrical lines and filed its return of income declaring total income of Rs.10,32,400/-. The case was selected for scrutiny under CASS to verify the receipts u/s. 194C and 194J as per 26AS, which are more than the receipts shown in the ITR. However, although there is huge difference between the receipts declared by the assessee at Rs.1,83,94,480/- and gross receipts as per 26AS at Rs.3,85,80,378/-, we find the AO did not bother to ask the assessee to explain the difference and passed the order thereafter on the basis of submission filed by the assessee. On being questioned by the Bench to the Id. counsel for the assessee as to whether the AO has asked any query regarding the discrepancy in the receipts as per 26AS and receipts shown in the profit and loss account, the Id. counsel for the assessee could not bring to our notice any such query raised by the AO except stating that assessee has filed the bank statement, 26AS details, books of accounts etc. before the AO, who after verifying the same has accepted the return income. In our opinion, when the case was specifically selected to verify the huge difference between the receipts u/s. 194C and 194J as per 26AS and the receipts shown in the ITR, it was the duty of the AO to verify the discrepancy. However, the AO in the instant case neither asked the assessee to reconcile the difference nor did he undertake any exercise himself to reconcile the same. Under these circumstances, the order passed by the AO, in our opinion, became erroneous as well as prejudicial to the interest of the revenue. We, therefore do not find any infirmity in the order of the PCIT invoking jurisdiction u/s.

263 of the I.T.Act. Accordingly, the order of the PCIT is upheld and the grounds raised by the assessee are dismissed.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 14<sup>th</sup> October, 2022.

<b>Sd/-</b> <b>(K.NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 14<sup>th</sup> October, 2022.

*Thirumalesh/sps*

Copy to:

S.No	Addresses
1	HI-TECH Electricals H.No.1-9-329 Flat No.402, P.K.Mansion Vidyanagar Hyderabad-500 044
2	ITO,Ward-4(2) I.T.Towers A.C.Guards, Masab Tank Hyderabad
3	PCIT-1, Hyderabad
4	Add.CIT, Range-4, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*