

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

Appeal in ITA No	A.Y	Appellant	Respondent
16/Hyd/2018	2009-10	Dy.CIT, Central Circle-2(4) Hyderabad	Agri Gold Construction (P) Ltd, Vijayawada PAN:AADCA5210E
17/Hyd/2018	2010-11	-do-	-do-
18/Hyd/2018	2011-12	-do-	-do-
19/Hyd/2018	2012-13	-do-	-do-
20/Hyd/2018	2013-14	-do-	-do-
21/Hyd/2018	2014-15	-do-	-do-
213/Hyd/2018	2008-09	-do-	-do-
1171/Hyd/2018	2015-16	-do-	-do-
48/Hyd/2018	2009-10	Agri Gold Construction (P) Ltd, Vijayawada PAN:AADCA5210E	Dy.CIT, Central Circle-2(4) Hyderabad
49/Hyd/2018	2010-11	-do-	-do-
50/Hyd/2018	2011-12	-do-	-do-
51/Hyd/2018	2012-13	-do-	-do-
52/Hyd/2018	2013-14	-do-	-do-
53/Hyd/2018	2014-15	-do-	-do-
1888/Hyd/2018	2015-16	-do-	-do-

Assessee by:	Shri M.V. Prasad, C.A
Revenue by:	Shri Jeeval Lal Lavidiya, DR
Date of hearing:	28/11/2022
Date of pronouncement:	29/11/2022

**ORDER**

**Per Bench:**

The above batch of appeals filed by the assessee and the Revenue respectively are directed against the separate orders

of the learned CIT (A)-12, Hyderabad relating to the respective A.Ys mentioned above. For the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

2. First we take up ITA No.48/Hyd/2018 by the assessee and ITA No.16/Hyd/2018 filed by the Revenue for A.Y 2009-10 as the lead case.

### **ITA No.48/Hyd/2018 – A.Y 2009-10**

2.1 Facts of the case, in brief, are that the assessee is a company engaged in the business of real estate. It filed its original return of income on 28.2.2010 admitting income of Rs.1,24,40,453/-. The Assessing Officer completed the assessment u/s 143(3) on 22.2.2011 wherein he had estimated the income from sale of plots @5% of the turnover, interest income @ 5%, income from construction activity @ 8% and income from insurance commission @ 50%. Subsequently, a search and seizure operation u/s 132 of the I.T. Act was conducted on 23.01.2015. In response to notice u/s 153A issued and served on the assessee on 19.8.2015 calling for return of income, the assessee company did not file the return of income. In absence of any return filed by the assessee, the Assessing Officer completed the assessment u/s 144 r.w.s. 153A and determined the income of the assessee at Rs.27,42,14,101/- by estimating the business income @ 15% of the gross receipts, insurance commission at Rs.10,32,041/- and interest income at Rs.4,93,03,513/-. Apart from the above, the Assessing Officer also made addition of Rs.2,45,00,000/-u/s 68 of the Act.

3. In appeal, the learned CIT (A) directed the Assessing Officer to estimate the income @ 5% of the gross receipts and sustained the addition of Rs.2,45,00,000/- made by the Assessing Officer u/s 68. So far as the interest income of Rs.4,93,03,513/- is concerned, the learned CIT (A) after obtaining a remand report from the Assessing Officer directed the Assessing Officer to treat the interest income as income from business and estimate such income on par with the income from business. So far as the insurance commission is concerned, the learned CIT (A) held that since the Assessing Officer has already estimated such income at 50% of such commission, therefore, no further addition need to be made as the Assessing Officer in the original assessment order dated 22.2.2011 passed u/s 143(3) had already estimated such income at 50%.

4. Aggrieved with such part relief given by the learned CIT (A), both the Revenue and assessee are before the Tribunal by raising the following grounds:

5. Grounds raised by the assessee in ITA No.48/Hyd/2018 for the A.Y 2009-10 reads as under:

*“1. The learned CIT (Appeals) is erred in facts and law while passing the order.*

*2. The learned CIT (Appeals) erred in arriving at the conclusion that the company has sought to introduce cash credits without establishing identity, creditworthiness and genuineness as required u/s. 68 even though the appellant company has provided the details of the investor Companies and the income Tax Returns of the investor Companies.*

*3. The learned CIT(Appeals) erred in coming to the conclusion and upholding the order of AO even though the appellant company has proved the identity of the shareholder by providing the Income Tax return, genuineness of the transaction was proved by submitting the share allotment Form filed with ROC and creditworthiness was proved by providing the balance sheet of the investor company. The CIT*

*(appeals) has ignored all the information submitted and dismissed the appeal by upholding the AO order.*

*4. The learned CIT (Appeals) was unjustified in confirming the addition made U/s 68 in the hands of the receiving company irrespective of the fact that even though the identity of the investor is proved during the course of remand proceedings. This act against the law and violation of natural justice.*

*5. Whether on the facts and in the circumstance of the case and in law, the CIT(Appeals) was unjustified in holding that assessment under section 153A could be made even when no incriminating material found in the search.*

*6. On the facts and circumstances of the case the CIT(Appeals) has ignored the fact that Section 143(3) was completed and all aspects were covered in the original assessment.*

*7. On the facts and circumstances of the case the CIT(Appeals) is erred in estimating the income 5% on the gross receipts as there is no incriminating material is in the possession of the department and further the regular assessment is being completed.*

*8. The Learned CIT(appeals) is erred in fact that once regular assessment is completed the additions can be made only on the basis-e incriminating material.*

*9. On the facts and circumstances of the case the learned CIT(Appeals) is erred in relying on the statement U/s 132(4) recorded from chairman of the group as no incriminating material was addressed/referred in the statement recorded U/s 132(4) for which there is no evidentiary value.*

*10. The Appellant craves to leave, to add, to amend and / or to alter any of grounds of appeal, if need be."*

6. Grounds raised by the Revenue in ITA No.16/Hyd/2018 for the A.Y 2009-10 reads as under:

*"1. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in directing to assess the business income @5% of the gross receipt as against 15% adopted in the assessment order, ignoring the reasons specified in the assessment order for estimating the income @15% of the gross receipt.*

*2. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in directing to assess the business income @5% of the gross receipt as against 15% adopted in the assessment order, ignoring the fact that the*

*estimate is based on the findings emanating from search conducted u/s 132?*

*3. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in directing to assess the business income @5% instead of @15% adopted by the AO without appreciating that the assessee failed to produce books of account and it is an admitted fact that the assessee has not furnished any documentary evidence in support of the claim of expenditure under different heads?*

*4. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) failed to appreciate the Apex Court's decision in Commissioner of Income Tax versus M/s. McMillan and Co., AIR 1958 Supreme Court 207, wherein the Hon'ble Supreme Court has laid down that if true income or profit cannot be ascertained on the basis of the assessee's methods of preparing accounts, then income must be computed upon such basis and in such a manner as the AO may determine.*

*5. Without prejudice to the Grounds of Appeal as mentioned in Sr. No. 1 to 4 above, whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in estimating the profit @ 5% of gross receipt without appreciating that in the appellate order dated 27.06.2014 for AY 2011-12 on which the present Ld. CIT(A) relied upon, the then CIT(A) in Para-5 of the appellate order has directed the AO to adopt estimation 8% of gross receipts of construction work and adopt estimation @ 5% of gross receipt on sale of plots?*

*6. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) failed in treating the interest income as business income without appreciating the fact that it has not been brought on record by the assessee that the surplus funds were put in FDRs on account of commercial expediency. Since the funds were not required at the relevant point of time in construction activities, the same were parked with bank to earn interest. Therefore, the interest earned on surplus funds parked with bank is not inextricably linked with the business activity of the assessee. Therefore, the interest earned by assessee cannot be treated as business income and same has been rightly treated as income from other sources by the Assessing Officer.*

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

7. The learned Counsel for the assessee at the outset submitted that the original assessment was made u/s 143(3) of

the Act on 22.2.2011. During the course of search no incriminating material, whatsoever, was found. At the time of assessment proceedings, the assessee could not produce the books of account since the Directors were in custody and due to non-availability of concerned persons, nothing could be produced before the Assessing Officer. He submitted that since the profit was estimated at a certain percentage during the original assessment proceedings and no incriminating material was found during the course of search and since the assessment was completed u/s 144/153A, therefore, given an opportunity, the assessee is in a position to substantiate its case before the Assessing Officer. He submitted that the addition made by the Assessing Officer u/s 68 is also not warranted since the money was received from the group concerns only and therefore, here also given an opportunity, the assessee is in a position to substantiate his case before the Assessing Officer. He accordingly submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case.

8. The learned DR, on the other hand, while supporting the order of the Assessing Officer submitted that some cases of the group concerns have already been restored to the file of the Assessing Officer for fresh adjudication. Therefore, he has no objection, if these appeals are restored to the file of the Assessing Officer for adjudication afresh.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We find the AO in the instant case passed the order u/s 144/153A determining the total income of the assessee at Rs.27,42,14,101/- as against

the original returned income of Rs.1,24,40,453/- by making various additions, such as estimating income from business @15% of the gross receipts, income from insurance commission at Rs.10,32,041/-, addition u/s 68 of Rs.2,45,00,000/- and interest income of Rs.,4,93,03,513/-. We find the learned CIT (A) while sustaining the addition of Rs.2,45,00,000/- directed the Assessing Officer to adopt profit rate @ 5% of gross receipts in line with the order of the Assessing Officer in the original assessment proceedings passed u/s 143(3) on 22.02.2011 wherein the Assessing Officer had adopted the profit rate of 5% for estimation of income of the assessee company. Similarly, he directed the Assessing Officer to consider the interest income as part of business receipts and estimate the profit @ 5%. So far as the insurance commission is concerned, he noted that the Assessing Officer in the original assessment had estimated such insurance commission at 50% of the total receipts, therefore, he directed the Assessing Officer to restrict the addition at 50% of such receipt and accordingly allowed the claim of the assessee. It is the submission of the learned Counsel for the assessee that during the proceedings u/s 153A, the assessee could not produce the books of account and furnish other details as called for by the Assessing Officer since the Directors were under custody and there was nobody available to produce the record/details before the Assessing Officer. It is his submission that given an opportunity, the assessee is in a position to substantiate its case before the Assessing Officer since the share capital that has been added by the Assessing Officer and upheld by the learned CIT (A) u/s 68 is nothing but receipt from the group concerns and therefore addition u/s 68 could not have been made. It is his submission that since the Directors are now free and the books of account are available with the assessee therefore, given an

opportunity, the assessee is in a position to substantiate his case. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh after giving due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee and the Revenue are accordingly allowed for statistical purposes.

10. Since identical issues have been raised by the assessee and Revenue in other appeals therefore, following our reasoning given above, we deem it proper to restore the issues to the file of the Assessing Officer for fresh adjudication for all these years. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the respective appellants are accordingly allowed for statistical purposes.

11. In the result, all the appeals filed by the assessee and Revenue are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 29<sup>th</sup> November, 2022.

<b>Sd/-</b> <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 29<sup>th</sup> November, 2022.

***Vinodan/sps***

Copy to:

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2	Agri Gold Construction (P) Ltd, 40-1-21/21, IV Floor, Catholic Comp-lex, MG Road, Labbipet, Vijayawada
3	CIT (A)-12 ,Hyderabad
4	Pr. CIT-Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*