

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

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

ITA Nos.2019 & 2020/Hyd/2018		
Assessment Year: 2012-13 & 2013-14		
Raghava Reddy Kunam C/o. Murali & Co. Chartered Accountants 6-3-655/2/3, 1 st Floor Somajiguda Hyderabad-500 082 PAN : AKLPK3884F	Vs.	DCIT,CC-2(1) Hyderabad

ITA Nos.2021 & 2022/Hyd/2018		
Assessment Year: 2012-13 & 2013-14		
K.Rajini Kunam C/o. Murali & Co. Chartered Accountants 6-3-655/2/3, 1 st Floor Somajiguda Hyderabad-500 082 PAN : BDNPK4677C	Vs.	DCIT,CC-2(1) Hyderabad

ITA Nos.2023 & 2024/Hyd/2018		
Assessment Year: 2012-13 & 2013-14		
K.Anil Reddy C/o. Murali & Co. Chartered Accountants 6-3-655/2/3, 1 st Floor Somajiguda Hyderabad-500 082 PAN : AVVPK8228J	Vs	DCIT,CC-2(1) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri P.Murali Mohan Rao, CA	
Revenue by:	Shri K.Haritha, CIT-DR	
Date of hearing:	19.01.2023	
Date of pronouncement:	19.01.2023	

ORDER**Per Shri Rama Kanta Panda (A.M.):**

The above batch of six appeals filed by the respective assesseees are directed against the common order dated 31.08.2018 of the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad relating to the respective assessment years mentioned therein. Since identical issues are involved in all these six appeals, therefore, these were heard together and are being disposed-of by this common order for the sake of convenience.

2. In these appeals, the three Directors of the company namely M/s. KRR Infra Projects Private Limited have challenged the order of the Id.CIT(A) holding that the appeals filed by the assesseees are not maintainable.

3. Facts of the case, in brief, are that in the case of M/s. KRR Infra Projects Private Limited a demand of Rs.184,79,16,029/- and Rs. 6,74,50,912/- were outstanding for the AY 2012-13 & 2013-14 respectively. Consequential order giving effect to the order of the Id.CIT(A) were duly served on the company but the tax was not paid by the company. The AO, therefore issued a show cause notice u/s. 179 of the I.T.Act dated 09.11.2017 asking the Directors of M/s. KRR Infra Projects Private Limited to explain as to why the provisions of section 179 of the I.T.Act should not be invoked. However, neither the Directors of the company nor any person appeared before the AO to file any submission. In view of the above, the AO held that the directors of the company have nothing to say in the recovery proceeding matter. He, therefore, invoking the provisions u/s. 179 of the I.T.Act directed the Directors to pay the demand of Rs. 191,53,66,941/- for the AY 2012-13 & 2013-14.

4. The assessee preferred an appeal before the ld.CIT(A) challenging the order passed u/s. 179 of the I.T.Act. It was argued that the order passed by the AO u/s. 179 of the I.T.Act is an appealable order. It was also argued that the AO has not taken any recovery proceeding against the said company for realization of the tax outstanding and wrongly invoked jurisdiction u/s. 179 of the I.T.Act. Relying on various decisions, it was submitted that the order passed by the AO should be set aside.

5. Based on the arguments advanced by the assessee, the ld.CIT(A) called for a report from the AO. After considering the report of the AO and the submission of the assessee, the ld.CIT(A) held that the appeals filed by the respective Directors of the company are not maintainable. The relevant observation of the ld.CIT(A) from para 6 onwards reads as under:-

6.0 I have thoughtfully considered the issue and perused the proceedings and provisions of law. Before adverting the issue, it would be necessary to examine the provisions of Sec 179 of IT Act 1961. Section 179 is as under:

"179. [(1)] Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), [where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company] cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect misfeasance or breach of duty on his part in relation to the affairs of the company.

[(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to I.T.A. Nos. 1579 & 1580/Hyd/2014 Sri N. Surya Prakash Rao Smt. N. Padmaja any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.] [Explanation.--For the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.]"

6.1 The Board circular No.179 dt.30-09-1975 also reiterates the same as

"17. Section 179 of the Income-tax Act imposes, in certain cases, a personal liability on the directors of a private company in respect of the tax payable by the company. Under this provision, in a case where a private company is wound up on or after 1st April, 1962, and it is found that any tax assessed on the company, whether before the commencement of the liquidation, or in the course of or after the liquidation, cannot be recovered from the company, then, every person who was a director of the company at any time during the relevant previous year is held jointly and severally responsible for the payment of the tax that cannot be so recovered. A director can escape this vicarious liability if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part. The Amending Act has enlarged the scope of this provision so as to impose personal liability on the directors of a private company in respect of any tax payable by the company even in cases where the company has not gone into liquidation. Further, where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered from the company, persons who were directors of the company in any such previous year will be jointly and severally responsible for the payment of such un-recovered tax, so, however, that the personal liability of a director in such a case will not extend to the tax payable for any assessment year prior to the assessment year 1962-63".

6.2 Thus, the provisions are attracted where –

- Any tax was due from any such company
- In respect of any income of any previous year during which such company was a private company which cannot be recovered then:
- Every person who was a Directors of the company at any time during the relevant previous year
- Shall be jointly and severally liable
- For the payment of such tax, unless he proves that non-recovery of the tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

6.3 The bare perusal of Section 179 shows that before recovery in respect of dues from the private company can be initiated against the Directors, it is necessary for the Revenue to establish that such recovery cannot be made against the private company and in that case, it can reach the Directors who are responsible for the conduct of business during the previous year in relation to which liability exists (Bhagwan Das J.Patel V. DCIT [238 ITR 127 (Guj)]). In the case at hand, as can be seen from the Order u/s.179 reproduced in Para 5.1 above, and from the AO's report reproduced in Para 5.3 above, recovery proceedings were duly undertaken against the company, M/s.KRR Infrastructure Projects (P) Limited, and it was only when these recovery proceedings did not yield any results, that the show-cause notice u/s.179 was issued to the

Directors. The ground raised by the appellant that no effective steps for the recovery of outstanding dues from the company were taken, is therefore incorrect. Similarly, the ground that the Order u/s.179 was passed without giving the appellant an opportunity of being heard, is also factually incorrect. The Assessing Officer duly issued a show-cause notice to the appellant on 09/11/2017. It is only when the appellant failed to reply that the Order u/s.179 was passed on 11/12/2017. All the grounds raised in this regard are therefore DISMISSED.

6.4 However, apart from the fact that these appeals deserve to be dismissed on merits also, as discussed in the preceding para, first of all, what needs to be decided here is the question whether the appeals are maintainable. An order u/s.179 is not appealable u/s.246A, since it does not fall within the ambit of Section 246A(1)(c).

On similar facts) it has been clearly held by the ITAT, Hyderabad in the case of N.Surya Prakash Rao, vs P.CIT) Circle-3(2) Hyderabad (I.T.A.No.1579/HYD/2014) vide its order dated 31st March) 2.015, that:

"As there is no provision to make an appeal against the order of the Assessing Officer u/s.179(1), the CIT(A) is correct in dismissing the appeal as not maintainable. We also do not get any jurisdiction to decide the issue on merits, as there is no right of appeal provided under the statute. This forum cannot adjudicate on the issues either legally or on merits. For these reasons, we are of the opinion that appeals preferred by assesseees cannot be maintained".

In view of this decision of the jurisdictional ITAT, it is abundantly clear that the present appeals are not maintainable, for the reason that they are filed against Orders u/s.179, on which provisions of Section 246A(1)(c) are not applicable.

7.0 In the result, the appeals of the appellants for the AYs 2012-13 & 2013-14 are DISMISSED, as not maintainable.

6. Aggrieved with such order of the Id.CIT(A), the respective assesseees have filed appeals which are identical in nature. For the sake of convenience, we reproduce the grounds of appeal in ITA No. 2020/Hyd/2018 which are as under:-

1. The Ld. CIT (A) erred both on facts and in law in dismissing the appeal as not maintainable.

2. The Ld. CIT (A) ought to have appreciated that the order passed u/s. 179(1) of the Act falls within clause (a) of Section 246(1) of the Act and that it is appealable.

3. The Ld . CIT (A) erred in not appreciating that the order passed u/s 179(1) of the Act was not maintainable in law.

4. The Ld. CIT (A) ought to have appreciated that the order passed u/s 179(1) of the Act was bad in law since it had not been found by the AO that tax was not recoverable from the company.

5. The Ld. CIT (A) ought to have appreciated that the assessee's appeal is maintainable.

6. The Ld.CIT (A) ought to have decided the appeal on merits.

7. The appellant may add or alter or mend or modify or substitute or delete and /or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.

7. The ld.counsel for the assessee strongly challenged the order of the ld.CIT(A) in holding that the appeals are not maintainable. He submitted that the appeals are very much maintainable and the ld.CIT(A) should have decided the issue on merit. He accordingly submitted that the grounds raised by the assessee should be allowed.

8 . The ld.DR on the other hand heavily relied on the order of the ld.CIT(A) and submitted that the ld.CIT(A) has given elaborate reasons while dismissing the appeals filed by the respective assessees. He submitted that since the order passed by the ld.CIT(A) is exhaustive and deals with all aspects argued by the ld.counsel for the assessee, therefore, the order of the ld.CIT(A) should be upheld and the grounds raised by the respective assessees should be dismissed.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. A perusal of the order passed by the AO shows that an amount of Rs.191,53,66,941/- was outstanding from M/s. KRR Infra Projects Pvt.Ltd. for the AY 2012-13 & 2013-14 for which the company was asked to pay the outstanding taxes. However, the

company failed to deposit the tax for which the AO issued a show cause notice to the Directors of the company asking them to explain as to why the provisions of section 179 of the I.T.Act should not be invoked. However, in absence of any reply from the directors of M/s.KRR Infra Projects Pvt.Ltd, the AO held that the directors have nothing to say in the recovery proceedings and therefore, the AO directed the Directors of the company to pay the outstanding demand of Rs.191,53,66,941/-immediately. We find when the assessee challenged the order passed by the AO u/s. 179 of the I.T.Act, the Id.CIT(A) in a detailed order passed by him held that the appeals filed by the respective assessees are not maintainable. While doing so, he relied on the CBDT circular No.179 dated 30.09.1975 and the decision of the co-ordinate Bench of the Tribunal in the case of N.Surya Prakash Rao vs. ACIT vide ITA No.1579/Hyd/2014 order dated 31.03.2015. The relevant observation of the Id.CIT(A) are already reproduced in the preceding paragraphs. The Id.counsel for the assessee could not point out any distinguishable features so as to take a different view than the view taken by the Id.CIT(A) while holding that the appeals filed by the respective assessees are not maintainable. Accordingly, we uphold the order of the Id.CIT(A) and the grounds raised by the respective assessees are dismissed.

10. In the result, all the six appeals filed by the respective assessees are dismissed.

Order pronounced in the Open Court on 19th January, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 19th January,2023.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	Raghava Reddy Kunam C/o. Murali & Co. Chartered Accountants 6-3-655/2/3, 1 st Floor Somajiguda Hyderabad-500 082
2	K.Rajini Kunam C/o. Murali & Co. Chartered Accountants 6-3-655/2/3, 1 st Floor Somajiguda Hyderabad-500 082
3	K.Anil Reddy C/o. Murali & Co. Chartered Accountants 6-3-655/2/3, 1 st Floor Somajiguda Hyderabad-500 082
4	DCIT,CC-2(1) Hyderabad
5	CIT(A)-12, Hyderabad
6	Pr.CIT(Central), Hyderabad
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order