

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
94/Hyd/2019	2015-16	Sri Sri Gruhanirman India Pvt. Ltd., Hyderabad [PAN: AALCS2721G]	The ACIT, Central Circle-2(3), Hyderabad
532/Hyd/2020	2016-17		The DCIT, Central Circle-2(3), Hyderabad
128/Hyd/2019	2015-16	The ACIT, Central Circle-2(3), Hyderabad	Sri Sri Gruhanirman India Pvt. Ltd., Hyderabad [PAN: AALCS2721G]
141/Hyd/2021	2016-17	The ACIT, Circle-3(1), Hyderabad	

निर्धारिती द्वारा / Assessee by: Shri K.A.Sai Prasad, AR
राजस्व द्वारा / Revenue by: Shri P.V. Subba Raju, DR

सुनवाई की तारीख/Date of hearing: 24/01/2023
घोषणा की तारीख/Pronouncement on: 28/02/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order(s) passed by the learned Commissioner of Income Tax(Appeals)-12, Hyderabad ("Ld.CIT(A)") in the case of Sri Sri Gruhanirman India Private Limited ("the assessee") for the assessment years 2015-16 & 2016-17, both the assessee and the Revenue preferred

these appeals. For the sake of convenience, we dispose of these appeals by way of this common order.

2. There was a search and seizure operation on 24/12/2014 in the case of Sri Sri Gruha Nirman India Pvt. Ltd. pursuant to the notice issued under section 153A of the Income Tax Act, 1961 (for short "the Act") the assessee filed the return of income on 30/9/2015 declaring an income of Rs.96,98,160/- comprising of business income. Learned Assessing Officer, by way of order dated 30/12/2016 passed under section 143(3) of the Act determined the income of the assessee at Rs. 3,64,52,460/- after making certain additions, more particularly under section 40A(3) of the Act read with section 40(a)(ia) of the Act and towards suppressed of income basing on some estimation, apart from undisclosed cash payments and cash found and seized.

3. Aggrieved by the action of the learned Assessing Officer, assessee preferred appeal before the Ld. CIT(A). By order dated 19/11/2018, Ld. CIT(A) partly allowed the appeal of the assessee, granting relief in certain aspects and upholding and modifying certain additions. Insofar as this appeal is concerned, the grievance of the assessee is in respect of the method of estimation adopted by the learned Assessing Officer in respect of suppressed turnover as well as the suppressed income, the additions sustained by the learned CIT(A) in respect of the undisclosed payments and the addition made in respect of the cash found and seized.

4. Ground No. 1 is general in nature, Grounds No. 2 to 4 are in respect of the method of determination of suppressed turnover. Grounds No. 5a and 5b are in respect of the quantification of suppressed turnover whereas ground No. 5c is about the estimation of income on the estimated suppressed turnover.

5. Insofar as these grounds are concerned, it is the case of both the parties that similar additions were there in respect of the assessment

years 2010-11 to 2014-15. Ld. CIT(A) while confirming the method of estimation of the suppressed turnover, directed the learned Assessing Officer to estimate 40% of such suppressed turnover as income. When such an order of the Ld. CIT(A) was appealed against, a Co-ordinate Bench of this Tribunal by order dated 27/7/2018 in ITA Nos 2237 to 2241/Hyd/2017 upheld the method of estimation of suppressed turnover by rejecting the grounds raised by the assessee, but while confirming the suppressed turnover, restricted the same to Rs. 7,90,46,385/- for the assessment years 2010-11 to 2015-16, which includes a sum of Rs. 2,77,09,435/- allocable for the assessment year 2015-16, and directed the learned Assessing Officer to estimate the income and 12.5% of such suppressed turnover.

6. Ld. AR submitted that against such an order passed on 27/7/2018 in ITA No. 2237/Hyd/ 2017 and batch, has been challenged by both the parties and the appeals are pending before the Hon'ble High Court. They, however, submitted that as the things stand today the findings of the Tribunal remain undisturbed.

7. In these circumstances, in view of the undisturbed findings of the Tribunal, we are of the considered opinion that rule of consistency demands that the settled position in assessee's own case for the earlier assessment years shall not be disturbed without there being any compelling circumstances. Accordingly, while respectfully following the view taken by the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment years 2010-11 to 2014-15, we dismiss ground No. 2 to 4 and 5a and 5b of the assessee's appeal and allow ground No. 5c in part directing the learned Assessing Officer to determine the profit @ 12.5% derived by the assessee on the suppressed turnover.

8. Coming to ground No. 6 and 7, relating to the additions made by the learned Assessing Officer and sustained by the Ld. CIT(A) on account of the alleged undisclosed payments, learned Assessing Officer recorded

that the assessee could not satisfactorily explain these amounts and on that ground he made the addition. Assessee, however, contends that by way of letter submitted to the learned Assessing Officer detailed submissions were made with regard to all the payments and that such payments were recorded in the books of accounts and, therefore, it cannot be said to be undisclosed payments. Learned Assessing Officer contended that the Managing Director on the date of search stated that the payments were not recorded in the books of accounts and, therefore, such payments remained undisclosed. Submission of the assessee is that the Ld. CIT(A) also did not look into the contentions made by the assessee in the letter, a copy of which is to be found at page No. 28 of the paper book, but simply brushed aside such submissions. Grievance of the assessee now essentially is that though the Managing Director of the assessee company might have stated that such payments were not recorded in the books, but when once the assessee makes an attempt to establish that such payments were in fact recorded in the books, not looking into that aspect does not seem to be correct to reject the contentions of the assessee.

9. It is an admitted fact that the hard disk of the computer of the assessee was seized by the Department and the books of accounts were submitted to the officials. In such circumstances nothing prevents the Revenue from looking into the record including the hard disk of the computer to find out the truth or otherwise of the contentions of the assessee. Merely because the Managing Director stated something at the time of search, such a statement does not preclude the Revenue from making rationale enquiry into the facts submitted by the assessee.

10. With this view of the matter, we are of the considered opinion that it would be in the interest of justice to direct the learned Assessing Officer to consider the explanation offered by the assessee in the light of the material available. Accordingly, we set aside the findings of the authorities below and restore the issue to the file of the learned

Assessing Officer to look into the books of the assessee in the light of their contentions, after affording an opportunity to the assessee, and take a view basing on such facts and according to law. Grounds No. 6 and 7 are accordingly allowed for statistical purpose.

11. What remains now to be considered is the addition of cash found at search and seizure covered by Grounds No. 8 and 9. Assessee drew our attention to a letter at page No. 12 of the paper book, statement of venture wise cash balance at page No. 13 of the paper book and the extracts of the venture wise cash book at page No. 47 of the paper book and submits that though all these documents were filed before the learned Assessing Officer and such a fact is brought to the notice of the Ld. CIT(A), both of them failed to consider the contention of the assessee in its proper perspective stating that the cash book might have been prepared subsequently, as supported by the fact that the Managing Director of the company could not explain the source of such cash.

12. Again on this aspect the submission of the assessee is that the hard disk of the computer of the assessee is available with the Department and the assessee furnished all the books of accounts and therefore, it will only be a matter of verification at the end of the authorities to know the truth. Apart from this, contention of the assessee is that when the books of accounts are not rejected, mere discrepancies here and there cannot be a reason to make any addition, merely basing on certain assumptions on the part of the authorities. On this basis, Ld. AR prays, the learned Assessing Officer may be required to examine the books of accounts to test the veracity of the contentions of the assessee.

13. Having regard to the facts and circumstances in their entirety, we are of the considered opinion that this issue also be restored to the file of the learned Assessing Officer for proper verification in the light of the books of accounts and the material that is contained in the hard disk of

the computer of the assessee. We hold and direct so. Accordingly, Grounds No. 8 and 9 are also allowed for statistical purpose.

14. Revenue appeal is in respect of the estimation of income on suppressed turnover and this issue is covered by Ground No. 5c of the assessee's appeal. Consequently, this ground of appeal is dismissed

15. In the result, appeal of the assessee for the assessment year 2015-16 is allowed in part for statistical purpose, and appeal of the Revenue is dismissed.

Assessment Year 2016-17:

16. In respect of this assessment year 2016-17, assessee challenged the reopening of the proceedings under section 147 of the Act but at the time of arguments, Ld. AR submitted that the Ld. CIT(A) did not address this ground. Ld. AR, however, submitted in respect of Grounds No. 3 to 6 that vide these grounds the assessee challenged the method of estimating the undisclosed turnover, quantification thereof and the income component relatable to such suppressed turnover.

17. Revenue is in appeal for this assessment year aggrieved by the direction of the Ld. CIT(A) to estimate the income of the assessee at 12.5% of the alleged suppressed turnover, however, with a delay of 100 days, and the reason for delay is attributed to the pandemic. As a matter of fact, though the learned DR does not concede to condone the delay, there is no denial of the fact that the Hon'ble Supreme Court in the Suo Motu proceedings in the case of M.A.No. 21/2022 in M.A.No. 665/2021 in SMW(C) No.3 of 2020 by order dated 10/01/2022 held that in cases, where the limitation would have expired during the period between 15/03/2020 and 28/02/2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01/03/2022, and in the event of actual balance period of limitation remaining with effect from 01/03/2022 is greater than 90 days,

that longer period shall apply. We, therefore, now shall proceed to hear the appeal condoning the delay.

18. Ld. AR submitted that these aspects are in fact covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment years 2010-11 to 2014-15 and for that matter for the assessment year 2015-16 also.

19. In the preceding paragraphs, we dealt with these aspects, and while respectfully following the view of the Co-ordinate Bench in ITA No. 2237/Hyd/2017 and batch by order dated 27/7/2018, we respectfully upheld the method of estimation of the suppressed income, quantification thereof and the estimate of net profit of the assessee at 12.5% of the suppressed turnover. Following the same, we direct the learned Assessing Officer to recompute the income of the assessee for the assessment year 2016-17 also on the same lines. With this view of the matter, we allow the appeal of the assessee in part and for statistical purpose and dismiss the appeal of the Revenue.

20. In the result, ITA No. 94/Hyd/2019 and 532/Hyd/2020 are allowed in part and for statistical purpose and ITA No. 128/Hyd/2019 and ITA No. 141/Hyd/2021 are dismissed.

Order pronounced in the open court on this the 28th day of February, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, Dated: 28/02/2023

TNMM

Copy forwarded to:

1. Sri Sri Gruhanirman India Pvt. Ltd., C/o. Ch. Parthasarathy & Co.,
1-1-298/2/B/3, 1st Floor, Ashok Nagar, Hyderabad.
2. The DCIT, Central Circle-2(3), Hyderabad.
3. The ACIT, Central Circle-2(3), Hyderabad.
4. The ACIT, Circle-3(1), Hyderabad.
5. Pr.CIT(Central)-Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD