

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

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

ITA.No.262/Hyd/2022		
Assessment Year: 2019-20		
M/s. Jothee Syndicate, 31-12-72, Dabagardens, Visakhapatnam. PAN : AACFJ3503F.	Vs.	Asst.Commissioner of Income Tax, Central Circle – 1(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Sri A. Srinivas, C.A.
Revenue by:		Sri KPRR Murthy,
Date of hearing:		20.02.2023
Date of pronouncement:		22.02.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals) – 11, Hyderabad for the AY 2019-20.

2. The only effective ground raised by the assessee reads as under :

“The Appellate Commissioner erred in confirming an amount of Rs.9,47,608/- with respect to differences in Daily Concession Register and the financial statements.”

3. The brief facts of the case are that the assessee filed its return of income for A.Y 2019-20 on 31.10.2019 declaring income at Rs.15,55,860/-. Subsequently, a search and seizure operation u/s. 132 of the Act was carried out in the Suresh Production group and its associate concerns on 20.11.2019 wherein certain incriminating material pertaining to the assessee was found and seized. Subsequently, a notice u/s.153C dated 09.02.2021 was issued to the assessee and in response thereto, the assessee filed its return of income for A.Y 2019-20 declaring income of Rs.15,55,860/-. Thereafter, the assessment was completed by the Assessing Officer interalia by making an addition of Rs.20,54,937/- on account of being variation in gross collections as per seized document and return of income and thereby assessed the income of the assessee at Rs.36,10,797/-

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who granted part relief to the assessee by holding as under :

"6. Decision:

In the instant case, the assessment was completed by making an addition of Rs.20,54,937/- on account being variation in gross collections as per seized document and return of income.

Going into facts of the case, during the course of Search u/s.132 in the case of Suresh Productions group and its associate concerns on 20.11.2019, daily collection registers of the appellant fi ..in were found, as per which the gross collections for the year under consideration is Rs.2,90,11,667/-(Rs.2,93,50,163 - 338496[audience count also included in the cumulative total which is just a number and not sales]) whereas the appellant had admitted gross collections of Rs.2,69,56,731/- as per return of income. The Assessing Officer rejected the appellant's contention regarding the difference and accordingly added the difference amount of Rs.20,54,937/- as income of the appellant.

During the course of appeal proceedings, the appellant reiterated its contentions and filed relevant financials and relevant GST returns in support of its contention. The appellant further stated that an amount of Rs.9,41,748/- pertains to net of credit notes which were recorded and reduced from the turnover and included as part of the turnover for the next financial year. The relevant part of GST return is as under:

**Image... left intentionally.*

From the above, it is seen that the appellant has reduced an amount of Rs.9,41,748/- from the turnover on account of being net of credit notes and on inclusion of taxes, the gross of the same is Rs.11,07,328/- (Rs.9,41,748 + Rs.82,790 + Rs.82,790).

Thus, after taking into account the above amount of Rs.11,07,328/-, the net collections is Rs.2,79,04,339/- (Rs.2,90,11,667 - Rs.11,07,328) whereas the appellant had admitted gross collections of Rs.2,69,56,731/- as per return of income.

With regard to the balance difference amount of Rs.9,47,608/- (Rs.2,79,04,339 - Rs.2,69,56,731), the appellant was not able to furnish any explanation with supporting evidence and therefore addition is confirmed to the extent of unreconciled amount of Rs.9,47,608/- and the ground no.2 is partly allowed accordingly."

5. Before us, ld. AR had submitted that although assessee has duly reconciled the difference between the Daily Collection Register and the financials as filed with return of income amounting to Rs.20,54,937/-, however, both the lower authorities have failed to go through the same properly for which the addition has been made by the AO and partly sustained by the ld.CIT(A). He further requested that the assessee may be given an opportunity to reconcile the difference to the satisfaction of the AO on the basis of the material available on record. Lastly, the ld.AR relied upon the decision in the case of M/s. Prasads SP Entertainment LLP, Hyderabad (ITA No.261/Hyd/2022 dt.21.12.2022), wherein the co-ordinate Bench of this Tribunal has decided the issue in favour of the assessee, which is identical to the facts and issues to the present case.

6. The ld. DR on the other hand strongly supported the order of the ld.CIT(A) and further submitted that no further opportunity should be granted to the assessee.

7. We find that an identical issue arose before the Co-ordinate Bench of this Tribunal in the case M/s. Prasads SP Entertainment LLP, Hyderabad (ITA No.261/Hyd/2022 dt.21.12.2022) (supra), wherein the co-ordinate Bench of the Tribunal had remitted back the matter to the file of Assessing Officer by holding as under :

“9. We have heard the rival arguments made by both the sides, perused the orders of the AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited by both the sides. We find on the basis of search conducted u/s.132 of the Act in the case of Suresh Production group and its associated concerns on 20.11.2019, the daily collection register of the assessee firm were found and seized as per which the gross collection for the year under consideration was Rs. 35,24,50,476/-. However, the assessee had admitted gross collection of Rs.34,62,37,549/- as per the return of income. Since the assessee could not reconcile the difference before the AO, the AO made addition of Rs.62,12,927/-. We find the ld.CIT(A) restricted the addition to Rs.37,98,743/-, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld.counsel for the assessee that he has given full details reconciling the difference between the two figures and the ld.CIT(A) without appreciating the facts properly has sustained a part of the addition made by the AO, which is not justified. It is his submission that given an opportunity, the assessee is in a position to reconcile the difference with evidence to the satisfaction of the AO or ld.CIT(A) as the case may be. Considering the totality of the facts of the case and in the interest of the justice, we deem it proper to restore the issue to the file of the AO with a direction to grant an opportunity to the assessee to substantiate his case with evidence to his satisfaction by reconciling the difference. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.”

8. In view of the above discussions and in view of the support drawn from the decision of Co-ordinate Bench of this Tribunal in the case of Prasads SP Entertainment LLP (supra), we restore the issue to the file of Assessing Officer with similar directions as mentioned in Prasads SP Entertainment LLP (supra). Further, we do not find any material on record to demonstrate that the order of Tribunal in the case of Prasads SP Entertainment LLP (supra), has been set aside / stayed / overruled by any higher judicial forum. Accordingly, the appeal of assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 22nd February, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd February, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	M/s. Jothee Syndicate, 31-12-72, Dabagardens, Visakhapatnam.
2	The Asst. Commissioner of Income Tax, Central Circle 1(2), Hyderabad.
3	PCIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order