

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

I.T.A. No.1979/Chny/2016
Assessment Year: 2012-13

The Assistant Commissioner of
Income Tax,
Non Corporate Circle 1(1) formerly
Known as Business Circle – 1,
Chennai 600 034.

Vs. M/s. Krishna Enterprises,
No. 14/28, Punarpoosam Apartments,
Thirumurthy Street, T. Nagar,
Chennai 600 017.

[PAN:AAIFK0698N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

I.T.A. Nos.1888/Chny/2016 & 153/Chny/2020
Assessment Years: 2012-13 & 2013-14

M/s. Krishna Enterprises,
No. 14/28, Punarpoosam Apartments,
Thirumurthy Street, T. Nagar,
Chennai 600 017.

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 1(1)
Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by : Shri AR V Sreenivasan, Addl. CIT
Assessee by : Shri G. Baskar, Advocate
सुनवाई की तारीख/ Date of hearing : 13.03.2023
घोषणा की तारीख /Date of Pronouncement : 29.03.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These appeals filed by the Revenue as well as assessee are directed against two different orders of the Id. Commissioner of Income Tax Act (Appeals) 2, Chennai dated 31.03.2016 and 28.11.2019 for the

assessment years 2012-13 and 2013-14 respectively. In the appeal filed by the Revenue, the following grounds have been raised:

6.1 *The learned CIT(A) failed to note that consequent to the relief granted by her, the taxable income has got reduced to Rs.1,15,00,338/-. As in the case of assessment years 2010-11 and 2011-12, the learned CIT(A) is not empowered to grant relief beyond the income returned, more particularly when such quantum of income is not taxed elsewhere.*

6.2 *The learned CIT(A) erred in deleting the addition to the tune of Rs.2,27,20,347/- made by the Assessing Officer on the ground that this amount received as advances and retained by the assessee was not refunded to the companies.*

6.3 *The learned CIT(A) erred in not appreciating the contention of the Assessing Officer that the excess advance paid by the companies and retained by the assessee of Rs.2,27,20,347/- should be recognized as income and hence the same was brought to tax accordingly.*

7. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."*

2. With regard to the first ground raised in the grounds of appeal in 6.1, no relevant material was brought on record and accordingly, the ground raised by the Revenue is dismissed.

3. With regard to the deletion of addition to the tune of ₹.2,27,20,347/- made by the Assessing Officer on the ground that this amount received as advances and retained by the assessee was not refunded to the companies, the detailed facts as emanating from the assessment order are reproduced as under:

2. *During the year under consideration the assessee admitted sales of Rs.3,15,500/- from gravel sales and claimed quarry expenses amounting to Rs.1,92,251/-. The assessee also admitted profit on land aggregation amounting to Rs.3,76,56,009/-. The profit includes of Rs.1,66,33,775/- from*

ILFS project and Rs.2,10,30,000/- from SRM Energy project. The increase in income from Rs.2,78,79,639/- to Rs. 3,06,42,988/- in the return filed in response to notice u/s 148 is due to withdrawal of depreciation on farm equipment and farm related expenditure.

3. From the details gathered during the course of survey and verification of books of account it is noticed that the assessee has purchased lands for companies like ILFS and SRM Energy. As per the details submitted the extent of land purchased and the cost etc. of such purchases and the amount received or receivable from the aforesaid companies are as under:

S.No.	Name of the company	Extent of land in acres	Cost of purchase including registration charges etc.	Amount receivable from company towards the land	Gross profit (₹)
1.	ILFS	-	-	-	-
2.	SRM Energy	39.77	1,73,40,903	1,95,85,000*	25,44,097

(*The amount receivable is worked at Rs .5 lakhs per acre as per the agreements)

4. Justification for not disturbing the profit admitted by the assessee:

Profits assessed today along with this order from A.Y. 2008-09 to 2012-13 based on the pro-rata basis and the rates as per agreements with the companies are as below:

A.Y.	ILFS	SRM	Good Earth etc.	Total
2008-09	1,02,98,000		2,74,12,865	3,77,10,865
2009-10	3,81,97,000	2,58,15,245	(-)1,55,408	6,38,56,837
2010-11	10,20,98,755	2,96,80,000	-	13,17,78,775
2011-12	2,79,20,000	1,50,32,455	-	4,29,52,455
2012-13	1,66,33,775	2,10,30,000	-	3,76,63,775
TOTAL	19,51,47,530	9,15,57,700	2,72,57,457	31,39,62,707

As against the above, the profits admitted by the assessee are as below:

ILFS	: Rs.17,80,31,297
SRM	: <u>Rs. 3,60,62,455</u>
Total	: Rs.21,40,93,752

From the details submitted and the books of account produced by the assessee it is noticed that though the assessee has stopped purchasing the lands for the aforesaid companies, it has retained advances from such companies and has decided not to refund the same on the plea that the firm is not bound to refund the amount since it has also spent in the form of advances to farmers for further aggregation for the aforesaid companies and not in a position to recover the same. The details of such amounts retained by the assessee are as under:

SRM	:	Rs. 9,53,31,843
Good Earth	:	<u>Rs. 2,72,57,459</u>
		Rs.12,25,89,302

Thus, the excess advance paid by the companies to the assessee has been retained by the assessee itself and has no intention to return the same. Therefore, the same has to be treated as income of the assessee. If the aggregate advance is added to the profit so far declared it works out to Rs.33,66,83,054/- which is less than the profits assessed at Rs.31,39,62,707/-. Hence, the difference of Rs.2,27,20,347/- is also assessed to tax as income of the assessee.”

4. On appeal, after considering the submissions of the assessee the Id. CIT(A) has observed that the difference of ₹.2,27,20,347/- has already been considered while computing the profits from the four projects in the above given assessment years and thus, there is no need to retain the above addition separately.

5. We have heard the rival contentions. In the assessment order, the Assessing Officer has noted that the assessee has not repaid the advances received and retained, thereby; the same has to be treated as income of the assessee. By adding the advance receipt to the profit declared by the assessee and actual profit determined by the Assessing Officer, there is difference of ₹.2,27,20,347/- and accordingly brought to tax. On appeal, the Id. CIT(A) has passed a detailed consolidated order for the assessment years 2008-09 to 2012-13 and with regard to the

issue of taxability of difference of ₹.2,27,20,347/-, the Id. CIT(A) has observed as under:

5.1.20.2 The addition of Rs.2,27,20,347 was made by the Assessing Officer on account of retained profits from SRM and Good Earth. This has already been considered while computing the profits from the four projects in the five assessment years. Hence, there is no need to retain this addition separately.

In the appellate order, the Id. CIT(A) has stated that the profits retained from SRM and Good Earth by the assessee has already been considered while computing the profits from the four projects in the above given assessment years. Accordingly, the Id. CIT(A) has observed that there is no need to retain the above addition separately. Thus, we find no infirmity in the order passed by the Id. CIT(A) on this issue. Accordingly, the ground raised by the Revenue is dismissed.

6. So far as appeal filed by the assessee in the assessment year 2012-13 is concerned, the assessee has challenged confirmation of net profit of ₹.1,35,97,822/- @ 30% on ₹.4,53,26,072 being sale of lands at Chavadi. During the course of examination of books of account, the Assessing Officer has noted that the assessee has sold plots and recorded the sales in ledger account named as "Plot Sales @ Chavadi Land". The aggregate amount of such sales made during the year between May, 2011 and March, 2012 was ₹.4,53,26,072/-. The assessee

did not admit the sales in the profit and loss account. Instead the above amount was transferred to another account named as “Chavadi – Work-in-progress A/c” and reflected in balance sheet. When the details of the particulars of the plots sold were asked, the assessee sought time but did not produce any details except stating that the layout has been developed on land purchased from SPIC a couple of years back. In the absence of any details forthcoming from the assessee, the net profit from the above sales was estimated at 30% gross receipts which works out to ₹.1,35,97,822/- and brought to tax. On appeal, the Id. CIT(A) confirmed the addition.

6.1 On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the Assessing Officer has estimated the net profit at 30% without any basis or any comparable case and prayed for deleting the estimated addition.

6.2 On the other hand, the Id. DR supported the order passed by the authorities below.

6.3 We have heard the rival contentions. In this case, since the assessee has not admitted the sales in the profit and loss account, the Assessing Officer has estimated the net profit at the rate of 30% of the

gross receipts, which comes to ₹.1,35,97,822/- and taxed. On appeal, the Id. CIT(A) confirmed the addition. We find that the above estimation of net profit is on higher side. Thus, in the absence of any comparables, we are of the considered opinion that the estimation of net profit @ 15% on sale of the plots would be reasonable. Accordingly, we set aside the order of the Id. CIT(A) on this issue and direct the Assessing Officer to estimate the net profit @15% towards sale of plots. Thus, the ground raised by the assessee is partly allowed.

7. So far as appeal filed by the assessee in the assessment year 2013-14 is concerned, the assessee has challenged the exparte order passed by the Id. CIT(A). After following due procedure and considering the submissions of the assessee, the Assessing Officer has completed the assessment order under section 143(3) of the Act dated 28.03.2016 by estimating the net profit at 30% and accordingly, addition of ₹.67,66,367/- was made. On appeal, since there was no representation from the assessee and by following the decisions in the case of CIT v. B.N. Bhattachargee & Anr. 118 ITR 461 and in the case of late Tukojirao Holkar v. CWT 223 ITR 480, the Id. CIT(A) dismissed the appeal filed by the assessee by confirming the addition made by the Assessing Officer.

7.1 On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has challenged the exparte order passed by the Id. CIT(A) without deciding the appeal on merits. It was further submission that the issue involved in this appeal was also subject matter in the assessment year 2012-13 and the decision of the Tribunal may be applied for the assessment year 2013-14 also.

7.2 We have heard the rival contentions. Against the addition made by the Assessing Officer, the assessee preferred further appeal before the Id. CIT(A). The Id. CIT(A) has afforded as many as 12 opportunities, but, none appeared on behalf of the assessee. Hence, by following various case law, the Id. CIT(A) dismissed the appeal filed by the assessee and confirmed the addition made by the Assessing Officer.

7.3 Similar issue was subject matter in appeal for the assessment year 2012-13, wherein, the Assessing Officer has estimated net profit from the sale at 30% of gross receipts. In the assessment order for the assessment year 2013-14 also, the Assessing Officer has estimated the net profit from the sale at 30% of gross receipts/advances, which works out to ₹67,66,367/- on par with the assessment year 2012-13, which was confirmed by the Id. CIT(A). In the assessment year 2012-13, the Tribunal has considered the issue and held that the estimation of net profit @ 15%

on sale of the plots would be reasonable. In view of the directions given for the assessment year 2012-13, for the assessment year 2013-14 also, we direct the Assessing Officer to estimate the net profit at 15% of the gross receipts. Accordingly, the ground raised by the assessee is partly allowed.

8. In the result, the appeal filed by the Revenue is dismissed, the appeals filed by the assessee in I.T.A. No. 1888/Chny/2016 and I.T.A. No. 153/Chny/2020 are partly allowed.

Order pronounced on 29th March, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 29.03.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.