

आयकर अपीलीय 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

ITA No.991/Hyd/2019		
Assessment Year: 2010-11		
Income Tax Officer Ward 17(1) Hyderabad (Appellant)	Vs.	Dakshin Infrastructures (P) Ltd., Hyderabad PAN:AACCD4138P (Respondent)
Assessee by:	Shri S. Rama Rao, Advocate	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	18/04/2023	
Date of pronouncement:	20/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the Revenue is directed against the order dated 28.03.2019 of the learned CIT (A)-1, Hyderabad, relating to A.Y.2010-11.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of infrastructure activity. A survey operation u/s 133A was conducted in the business premises of the company on 7.8.2009. The assessee filed its return of income on 27.9.2010 declaring income of Rs.3,45,360/-. The assessment u/s 143(3) was completed on 28.3.2013 accepting the returned income of Rs.3,45,360/-.

3. Subsequently, the case was reopened u/s 147 of the Act on 19/11/2015 and accordingly notice u/s 148 of the Act was issued. Subsequently, notices u/s 143(2) and 142(1) were also issued and served on the assessee. The reasons for reopening of the assessment were also conveyed to the assessee. Subsequently, the Assessing Officer issued notices alongwith questionnaire in response to which the AR of the assessee appeared before him from time to time and furnished the requisite details.

4. The Assessing Officer during the course of assessment proceedings, observed from the balance sheet that the assessee has shown balance of Rs.46,33,16,915/- under current liability & provisions. The Assessing Officer, therefore, asked the assessee to explain as to why the advances of Rs.46,33,16,915/- should not be considered as turnover and accordingly taxed @ 8% of the receipts. The assessee vide letter dated 15/12/2016 stated that all the persons who had paid advance for sale of office space amounting to Rs.24,01,65,000/- had withdrawn their money, due to delay in completion of construction etc., as on this day. It was further submitted that since there has not been any transfer of property by the company to the persons who have paid advance, the entire amount cannot be treated as turnover in its hands. The assessee accordingly submitted that they are not in a position to offer any of the amount for taxation.

5. However, the Assessing Officer was not satisfied with the explanation given by the assessee. Referring to the decision of the Lucknow Bench of the Tribunal in the case of CIT vs. Gopalkrishna Builders reported in (91 ITD 124) wherein it has been held that the amount of advances received from customers

for booking of flats/office spaces is to be treated as turnover, the Assessing Officer applied the profit rate of 8% on Rs.46,33,16,915/- and accordingly made addition of Rs.3,70,65,353/-.

6. In appeal, the learned CIT (A) deleted the addition by observing as under:

“8. I have carefully considered the facts of the case, assessment order and the submissions of the appellant. As per the submissions of the appellant, the advances verified. The parties given advances during this assessment year were withdrawn and repayment was also done by the appellant in subsequent years. The property against which these advances were received was sold in the subsequent assessment years by the appellant. Therefore, the advances taxed during this year as turnover were already shown by the appellant as turnover in the subsequent year. Therefore, the submissions of the appellant accepted and the advances are not to be considered as turnover in this year since the same property was sold to other parties and showed as turnover by the appellant. Hence, addition made by the Assessing Officer deleted.”

7. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal by raising the following grounds:.

“1. The Learned CIT(A) erred both in law and on facts of the case.

2.. The Ld.CIT(A) erred in deleting the addition without according an opportunity under Rule 46A for the additional information submitted.

3. The Ld.CIT(A) erred in relying on the additional addition without calling for a information and deleting the remand report from the Assessing Officer.

4. The Ld.CIT(A) erred in allowing the assessee's grounds without giving an which opportunity was to the Assessing Officer for verification of the additional information not submitted during the scrutiny proceedings.

5. The Ld. CITA) erred in deleting the addition basing on the assessee's submission without bringing on record the details/information of the parties to whom the advances were returned and to whom the properties were sold.

6. The appellant craves leave to amend or alter any ground(s) or add a new ground which may be necessary.”

8. 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 have also considered the various decisions cited before us by both sides. We find the AO in in the instant case made addition of Rs. 3,70,65,353/- by adopting the profit rate of 8% of the advances of Rs.46,33,16,915/- crores shown by the assessee in the balance sheet under the heading "current liabilities and provisions" treating the same as turnover. We find the learned CIT (A) deleted the addition, the reason of which have already been reproduced in the preceding paragraphs. It is the submission of the learned DR that the order of the CIT (A) is a cryptic one without giving the reasons for such deletion and she was simply carried away by the submissions made by the assessee without calling for any remand report from the Assessing Officer on the various additional evidences submitted before her. We find force in the above argument of the learned DR. A perusal of the order of the CIT (A) shows that she had reproduced the order of the Assessing Officer and statement of facts and simply deleted the addition without mentioning who are the parties given advances during this A.Y or in the previous A.Ys and what are the amounts that have been withdrawn, the details of the properties against which the advances were received and subsequently withdrawn and which properties are sold in the subsequent A.Y etc. Since the order of the CIT (A) is a very cryptic one, therefore, 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 give an opportunity to the assessee to substantiate its case by filing the requisite details and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

9. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 20th April, 2023.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 20th April, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Income Tax Officer Ward 17(1)/Dy.CIT Central Circle 2(3) Room No.613, 6 th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad
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3	Pr. CIT, Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order