

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.160/Viz/2022

(निर्धारणवर्ष/ Assessment Year : 2018-19)

The Deputy Commissioner of
Income Tax,
Central Circle-1,
3rd Floor, Raj Kamal Complex,
Lakshmipuram, Guntur.

(अपीलार्थी/ Appellant)

Vs. M/s. Ravindra Bharathi
Educational Society,
D.No.23/812, Ravindra
Bharathi Bhavan,
Fathekhanpet, Nellore,
Andhra Pradesh-524003.
PAN: AAAAR 2715 E
(प्रत्यर्थी/ Respondent)

C.O. No. 21/Viz/2022

(आयकरअपीलसं./ I.T.A. No.160/Viz/2022)

(निर्धारणवर्ष/ Assessment Year :2018-19)

M/s. Ravindra Bharathi
Educational Society,
D.No.23/812, Ravindra Bharathi
Bhavan, Fathekhanpet, Nellore,
Andhra Pradesh-524003.
PAN: AAAAR 2715 E
(Cross Objector)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यर्थीकीओरसे/ Revenue by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

Vs. The Deputy Commissioner of
Income Tax,
Central Circle-1,
3rd Floor, Raj Kamal Complex,
Lakshmipuram, Guntur.

(प्रत्यर्थी/ Respondent)

Sri M.V. Prasad, AR

Sri ON Hari Prasada Rao,
Sr. AR

: 06/04/2023

: 23/05/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam in DIN & Order No. ITBA/APL/S/250/2022-23/1043288118(1), dated 01/06/2022 arising out of the order passed U/s. 147 of the Income Tax Act, 1961 [the Act] for the AY: 2018-19.

2. Briefly stated the facts of the case are that the assessee is an Association of Persons [AOP] and engaged in the business of imparting education to students. The assessee does not have a registration U/s. 12A of the Act. The assessee e-filed its return of income for the AY 2018-19 admitting a total income of Rs. 4,02,25,350/-. Thereafter, a survey operation U/s. 133A of the Act was conducted in the case of the assessee on 18/7/2019 and found that cash payments amounting to Rs. 2.81 Crs and Rs. 65 lakhs were made for purchase of Text Books and Note Books etc., and the same was impounded. Further, a provisional P & L Account, Balance Sheet for the AY 2019-20 was found which contained the details of cash payment of interest, rent and payment to valuer for the FY 2018-19 which was impounded in

Annexure – A/RBES/OFF/HYD/01. Similarly, payment of interest for the FY 2015-16 and 2017-18 and also the details of some other receipts are noticed and impounded in Annexure – A/RBES/OFF/HYD/02. It was clarified by the President of the Society Sri M. Subrahmanyam, the provisional P & L Account was prepared for the purpose of availing bank loan. The Survey Team also observed that there are cash payments, declaration of low profits which was intimated to the President of the assessee-Society. The President of the Assessee-Society admitted an additional income of Rs. 2.90 Crs for the AY 2018-19. Considering the above admission of the assessee, the case was reopened U/s. 147 of the Act and the notice U/s. 148 was issued on 4/12/2019 for the AY 2018-19 which was served on the assessee on 7/12/2019. Subsequently, a notice U/s. 142(1) of the Act was issued on 4/2/2021 calling for information. In the meantime, the assessee e-filed its return of income in response to notice U/s 148 of the Act admitting a total income of Rs. 4,02,25,350/- as admitted in the original return. Further, a notice U/s. 143(2) was issued on 19/4/2021. As there was no response from the assessee, a letter was addressed to the assessee on 16/4/2021 proposing an addition of Rs. 2.90 Crs as admitted by the assessee at the time of survey and called for its

objections. In response, the assessee e-filed a letter in ITBA on 20/04/2021 explaining that the cash payments were not made during the FY 2017-18 and all the payments for purchase of Text Books and Note Books etc., were made through cheques only. The Ld. AO considering the assessee's explanation not acceptable, made an addition of Rs. 2.90 Crs to the returned income of the Assessee while framing the assessment U/s. 147 of the Act and completed the assessment U/s. 144 of the Act. Aggrieved by the order of the Ld. AO, the assessee is in appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the assessee challenged the reopening of the assessment based on the admission made by the President of the Assessee-Society. The Ld. CIT(A) in his detailed order, relying on various judicial pronouncements, considered the submissions made by the assessee and allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. The Revenue has raised the following grounds of appeal:

"1. The order of the Ld. CIT(A) is erroneous both on the facts and in law.

2. *The Ld. CIT(A) is not justified in stating that reopening the assessment U/s. 147 of the Act is bad in law.*
3. *The Ld. CIT(A) has erred in law and on facts when stating that reopening the assessment was done without referring to the incriminating material.*
4. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 2.90 Crs as the assessee admitted the additional income of Rs. 2.90 Crs as per the material found during the course of survey U/s. 133A.*
5. *The Ld.CIT(A) is wrong on facts when stating that the assessee has retracted the statement recorded during the course of survey as the assessee has never stated that it is retracting from the statement.*
6. *The Ld. CIT(A) erred on law and in facts in admitting the explanation of the assessee that the admission is due to miscomprehension as the retraction of admission was without any proof or evidence.*
7. *The Ld. CIT(A) erred on law and facts in ignoring the unaccounted transaction recorded in the incriminating impounded material.*
8. *Any other ground that may be urged at the time of hearing."*

5. At the outset, the Ld. DR argued that since the assessee has admitted Rs. 2.90 Crs during the survey but has failed to admit the same while filing the return of income U/s. 148 of the Act. The Ld. DR further submitted that the Ld. CIT(A) has relied on the decision of Pullangode Rubber Producer Co. Ltd vs. CIT

[1973] 91 ITR 18 wherein it was held that *reopening based on admission is an extremely important piece of evidence*. The Ld. DR further submitted that since the assessee has not declared the income admitted, the Ld. AO has rightly considered that there is a reason to belief escapement of income by the assessee. The Ld. DR also referred to the reasons for reopening. The Ld. DR therefore pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. AR argued that the Ld. AO has relied on the admission made by the President of the Assessee-Society and has not brought in any corroborative evidence to support the reopening U/s. 147 of the Act. The Ld. AR further submitted that the Ld. AO has also not rejected the books of account while estimating the income of the assessee based on the admission. Further, the Ld. AR also referred to the reasons for reopening in paper book page No. 24 wherein the Ld. AO has purely relied on the admission of the assessee as a valid reason for reopening of the assessment for the AY 2018-19. The Ld. AR also referred to the Hon'ble Supreme Court decision in the case of Pullangode Rubber Producer Co. Ltd vs. CIT (supra) wherein it has been held that *"even though an admission is an extremely important piece of evidence, it cannot be said to be a conclusive"*. Further, the Ld.

AR also placed heavy reliance in the decision of the Hon'ble Madras High Court in the case of CIT vs. M/s. S. Khader Khan Son. The Ld. AR also referred to page 6 of the paper book wherein a table was given justifying the increase in interest and depreciation expenditure being the cost for the lower declaration of profits for the impugned assessment year. Further, the Ld. AR also submitted that Annexure - A/RBES/OFF/HYD/02 wherein there are cash payments of interest of Rs. 26 lakhs, which are already included in the sundry expenses in the P & L Account and hence there is no escapement of income as relied on by the Ld. AO. Further, the Ld. AR also submitted that during the course of survey proceedings, no material which is incriminating in nature to have a bearing on the assessment was found. Further, the Ld. AR also referred to the retraction of President of the Assessee-Society and stated that the assessee has wrongly submitted that the admission of additional income at the time of survey was made due to miscomprehension of facts and low profits of margins were correctly justified and recorded. The Ld. AR therefore pleaded that the reopening of assessment was bad in law, invalid and unsustainable in law as it is based on the admission during the survey and not based on any corroborative

evidence hence pleaded that the order of the Ld. CIT(A) be upheld.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Admittedly, we find that the reopening is based on the admission of additional income of Rs. 2.90 Crs by Sri. M. Subrahmanyam, President of the Assessee-Society at the time of survey. Subsequently, the President of the Assessee-Society retracted his statement and stated that the admission was due to low profit ratios at the time of survey was made due to miscomprehension of facts whereas the low profit margins were justified and correctly recorded. Further, we find that the Hon'ble Supreme Court in the case of Pullangode Rubber Producer Co. Ltd vs. CIT [1973] 91 ITR 18 (supra) held that "*an admission is an extremely importance piece of evidence but it cannot be said to be conclusive*". There is merit in the argument of the Ld. AR that the Ld. AO has erred in relying on the statement of admission by the assessee was the sole reason to reopen the assessment U/s. 147 of the Act without bringing any additional corroborative material on record. Various judicial pronouncements have held that a confessional statement made during the survey cannot be

considered as a reason for reopening of the assessment in the absence of any supportive incriminating material having direct nexus / correlation with the statement. For having a reason to believe there must be some tangible material which indicates the income escaped assessment. Merely based on the suspicion or surmises, the Ld. Assessing Officer is not permitted to reopen the assessment. It is also seen from the submissions made by the Ld. AR that the assessee has incurred huge expenditure in the form of interest and hence the low profit margin. The Ld. AO has also not brought on record any material or finding based on the suppression of receipts or unrecorded transactions for the year. The reference was made by the Ld. AR to the Circular Dated 10/03/2003, deserves consideration, which reads as under:

"Instances have come to the notice of the Board where assessees have come to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, Assessing Officers should rely upon the evidences / materials gathered during the course of search / survey operations or thereafter while framing the relevant assessment orders”.

7. Further, any statement recorded U/s. 133A of the Act is not given any evidentiary value obviously for the reason that the Officer is not authorized to administer oath and to take any sworn statement as contemplated in law. Further, the word “may” used in Section 133A(3)(iii) of the Act makes it clear that the materials collected and the statement recorded during the survey U/s. 133A are not conclusive piece of evidence by itself. The case relied on by the Ld. DR in ACIT vs. Rajesh Jhaveri Stock Brokers Pvt Ltd in Appeal (Civil) No. 2830 of 2007) (Supreme Court), dated 23/05/2007 is distinguishable on the fact that wherein para 16 it has been held by the Hon’ble Apex Court that *the question is whether there was any relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at this stage?”* However, in the instant case, the Ld. AO has not brought in any relevant materials conclusively to prove that there is escapement of income. In the light of the above

discussions, we find no infirmity in the order of the Ld. CIT(A) in para 5.4 of his order which reads as under:

"5.4. During the assessment proceedings the appellant society had established that what was said and admitted in the survey was not correct and hence the admission for offer of additional income on account of low profit margin had no justification. It was explained that the interest payments on loans taken by the appellant from the banks for its working capital requirements had increased over the years resulting in low profit margins. A comparative chart showing the net profit receipts to the gross receipts for various financial years from assessment year 2015-16 to 2018-19 was submitted during the assessment proceedings through which low profit margins was explained. On perusal of the comparative chart, it is noticed that the bank interest has been showing an increasing trend which was Rs. 23,19,56,781/- in Assessment year 2015-16 rose to Rs. 26,94,41,160/- in the Assessment Year 2018-19 having an impact on the profit margins. In comparison the net fee receipts from the students did not register significant increase as concessions have been allowed to the students. With respect to cash payments of interest of Rs. 26 lakhs for the year under consideration it was submitted that the same was included in the sundry expenses in the profit & loss account for the year under consideration and hence was not an unaccounted item. The low profit margin at the time of survey was only observation made by the AO and not a conclusive finding based on suppression of receipts of unrecorded transaction for the year. The appellant had clarified subsequently that what he had said during the survey was not correct due to misapprehension of facts. I observe that the AO has not taken into account the submissions made by the appellant during the assessment and has made the addition only on the basis of confessional statement at the time of survey without any supporting material. If the AO disagreed with the claims of the appellant with respect to the justification for low profit margins he ought to have brought on record with relevant material that the justification for the claims being made by the appellant are not correct. Instead the AO has only relied on the admission given at the time of survey and made the addition. Considering the above facts and circumstances of the case and the judicial pronouncements cited above grounds no.2, 3, 4 & 5 are allowed."

8. From the above, we find that the Ld. CIT(A) has rightly held that the reopening is bad in law and allowed the appeal of the assessee. We therefore are of the considered view that no interference is required in the order of the Ld. CIT(A) and hence the grounds raised by the Revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

10. With respect to Cross Objection of the assessee, Grounds No. 1, 2, 3, 4 & 6 are supportive in nature and therefore they are considered as infructuous and dismissed as such.

11. With respect to Ground No. 5 of the Cross Objection wherein the objection was raised by the assessee with respect to estimation of income without rejecting the books of account, we note that since the appeal of the Revenue is dismissed based on considering the reopening of assessment is bad in law, this ground needs no separate adjudication and hence this ground is dismissed.

12. In the result, Cross Objection filed by the assessee is dismissed as infructuous.

13. Ex-consequenti, appeal of the Revenue and the Cross Objection of the Assessee are dismissed.

Pronounced in the open Court on the 23rd May, 2023.

Sd/-

(दुव्वुळार.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 23.05.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-M/s. Ravindra Bharathi Educational Society, Dr. No. 23/812, Ravindra Bharathi Bhavan, Fathekhanpet, Nellore, Andhra Pradesh – 524003.
2. राजस्व/The Revenue –Deputy Commissioner of Income Tax, Central Circle, 3rd Floor, Raj Kamal Complex, Lakshmiapuram Main Road, Guntur – 522007, Andhra Pradesh.
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam