

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No.281/Hyd/2022		
Assessment Year:2016-17		
Balaji Developers Hyderabad	Vs.	ACIT Circle 9(1) Hyderabad
(Appellant) PAN:AAMFB2401J		(Respondent)
Assessee by:	Shri Ravi Bharadawaj, CA	
Revenue by:	Dr.K Madhusudan, CIT(DR)	
Date of hearing:	14/06/2023	
Date of pronouncement:	21/06/2023	

**ORDER**

**Per Laliet Kumar, J.M**

This appeal filed by the assessee is directed against the order dated 25.03.2021 of the learned CIT (A)-4, Hyderabad relating to A.Y.2016-17.

2. Grounds raised by the assessee reads as under:

*“Ground No. 1: The order of the Hon'ble Principal Commissioner of Income Tax - 4, Hyderabad, is opposed to law and facts of the case.*

*Ground No. 2: The Hon'ble Principal Commissioner of Income Tax - 4, Hyderabad erred in holding that the Assessing Officer has not conducted a proper examination of the receipts pertaining to the sale of various flats, where the receipts are less than the amount reflected in Form 26AS. Ground No. 3: The Hon'ble Principal Commissioner of Income Tax - 4, Hyderabad failed to appreciate the reasons for the alleged difference between income reported by the Appellant and amount reflected in Form 26AJ In respect of various flats.*

*Ground No. 4: The Hon'ble Principal Commissioner of Income Tax - 4, Hyderabad failed to appreciate that any difference in income reported by the Appellant and amount reflected in Form 26AS is on account of timing of revenue recognition resulting in timing differences, and as such is not a valid ground to invoke the provisions of Section 263 of the Act.*

*Ground No. 5: The Hon'ble Principal Commissioner of Income Tax - 4, Hyderabad failed to appreciate that the twin conditions prescribed to invoke the provisions of Section 263 of the Act, i.e., order being erroneous and prejudicial to the interests of the revenue are not satisfied in the present case.*

*Ground No. 6: The Hon'ble Principal Commissioner of income Tax - 4, Hyderabad failed to appreciate that the assessment order passed u/s 143(3) of the Act is not erroneous in so far as it is prejudicial to the revenue as envisaged under Explanation 2 to Section 263 of the Act.*

*Ground No. 7: The Hon'ble Principal Commissioner of Income Tax - 4, Hyderabad ought to have appreciated that the Appellant had produced all the required documents and workings for each flat in support of the revenue recognition and comparison with Form 26AS and the same was duly examined by the Assessing Officer, hence, there the assessment order is not erroneous prejudicial to the interest of revenue. Or Ground No.*

*8: The appellant craves for leave to add to, delete from or amend the grounds of appeal”.*

3. Facts of the case, in brief, are that the assessee is engaged in the construction and sale of flats in the venture by name, M/s. Balaji – Eternal Bliss. The assessee filed its return of income for the A.Y 2016-17 on 30.09.2016 admitting total income at Rs.37,79,400/-. The Assessing Officer completed the assessment u/s 143(3) of the Act on 24.05.2018 accepting the income returned as per the return of income filed.

4. The PCIT examined the record and noted that the Assessing Officer considered the receipts admitted on the sale of plots which are less than the amount shown as per 26AS. On verification of detailed statement of flats sold by the assessee, the PCIT observed that an amount of Rs.44,66,429/- was shown as

receipts from Sri Anto George & EML Anto whereas the amount was shown at Rs.58,07,802/- as per 26AS statement. Similar defaults were observed in the cases of Sri Saptarshi Mohanti, Sri Aravinda Mohanty, Sr. V Padmanabhan, Ms. Rashmi Ranja Patra etc.

5. The learned PCIT rejecting the explanation given by the assessee passed the order u/s 263 of the Act thereby annulling the order passed by the Assessing Officer and has further directed the Assessing Officer to decide the issue in the following manner:

*“8. In view of the foregoing observations, the AO failed in his basic duty to examine these aspects while completing scrutiny assessment. The Assessing Officer has not thoroughly verified the reasons for selection of scrutiny and failed to obtain the necessary evidences in support of the issues discussed above, before completion of the assessment. Hence, there is an error in the assessment order framed by the AO which is prejudicial to the interest of the revenue and deserves to be set aside to revise such assessment by invoking the provisions of section 263 of the I. T Act.*

*8 8.1 in view of the above, the order passed u/s. 143(3) of the Act by the Assessing Officer on 24.05.2018 is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the issue of differences in receipts as per the 26AS statement and that of assessee's books of Accounts, as discussed above, is set aside to the file of Assessing Officer for necessary verification. If assessee fails to substantiate the difference, the AO is directed to work out the total difference in the sales reported as per return of income and 26AS statement and such difference shall be treated as unaccounted receipts and bring the same to tax. The AO shall afford reasonable opportunity of being heard to the assessee before passing the consequential order.”*

6. Aggrieved with such order of the learned PCIT, the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee, at the outset, submitted that the Assessing Officer in the original assessment proceedings has sought to examine the limited scrutiny issue and

for that purpose the Assessing Officer had issued show-cause notice to the assessee. In reply to the show-cause notice, the assessee had furnished the details as called for and our attention was drawn to page 27 of the Paper Book wherein the reply of the assessee has been placed on record. As per the said reply (para 4 & 5), the case of the assessee before the Assessing Officer was that the assessee is following the percentage method instead of project completion method and further the difference in the reconciliation of the TDS was on account of the flats which was valuing less than Rs.50.00 lakhs. It was further submitted that the assessee has accounted for the payment received by it for the subsequent A.Y or in previous A.Y. It was submitted that once the issue has been examined by the Assessing Officer, it is not open for the learned PCIT to impose upon the assessee his point view. It was submitted that when two methods of accounting i.e. project completion and percentage completion methods are permissible and the assessee had opted for percentage completion method and debited the payment received by it from the prospective flat owners in the respective A.Ys, then it cannot be said that the Assessing Officer has not applied his mind. It was further submitted that the learned PCIT had not given any finding as to how the order passed by the Assessing Officer has become erroneous and prejudicial to the interest of the Revenue. It was submitted by the learned Counsel for the assessee at Para 7 had mentioned the name of 5 persons, which according to the learned PCIT were not matching with payment received during the year under consideration and the TDS deducted. It was submitted that it is for the learned PCIT to bring on record as how the entire assessment order can be set aside, when PCIT had only pointed out difference with reference 5 persons only. He drew the attention of the Bench to page 44 of the paper book wherein the

detail of the payment received, TDS deducted and the year of credit has been mentioned in respect of these 5 persons. For the above, he drew the attention of the Bench to page 44 of the paper book wherein as per Annexure 3 details of receipts received and offered to tax in preceding or succeeding years are given:

BALAJI DEVELOPERS  
FINANCIAL YEAR 2015-2016  
Receipts received and offered to tax in preceding or succeeding Years are available in Form 26AS  
Annexure 3

Sr. No.	Date	Flat No.	Customer Name	Total Amount as per Books	Total TDS accounted as per Books	Total Amount as per 26AS	Total TDS as per Form 26AS	Difference between Total Amount	Difference between Total TDS	Income offered to tax in the FY 2014-15 as per Books of Accounts	Income offered to tax in the FY 2016-17 as per Books of Accounts	Income offered to tax in the FY 2017-18 as per Books of Accounts	Income offered to tax in the FY 2018-19 as per Books of Accounts
1	31-03-2016	A G-06	Anto George & Erni Anto	4,466,429	58,079	5,807,802	58,078	1,341,373	1	-	1,935,941.00	-	-
2	31-03-2016	A-102	A Deepak Parasar	3,385,766	38,391	3,839,154	38,392	453,388	1	1,642,313.00	927,842.00	-	-
3	31-03-2016	A-203	V Padmanaban	3,794,569	38,000	3,800,000	38,000	5,431	-	-	1,652,268.00	-	-
4	31-03-2016	B G-03	Satish	1,797,881	22,324	2,232,377	22,324	434,496	0	1,534,290.00	2,244,455.00	-	-
5	31-03-2016	B 103	Rashmi Ranjan Patra	1,792,327	22,378	2,237,751	22,378	445,424	0	1,529,550.00	2,226,777.00	-	-
6	31-03-2016	B 203	Saptarshi Mohanty	1,792,327	23,380	2,337,920	23,379	545,593	1	1,529,550.00	2,226,777.00	-	-
7	31-03-2016	B 303	Aravind Mohanty & Suchita	1,792,327	22,256	2,225,604	22,256	433,777	0	1,529,550.00	2,226,827.00	-	-
8	31-03-2016	F-103	Krishna Kumar Kuttly	1,891,681	13,007	5,612,505	56,125	3,720,824	43,118	3,008,160.00	551,011.00	-	-
9	31-03-2016	A-302	Tapashree Biswal Ayushem	3,109,956	41,973	4,747,244	47,472	1,637,288	5,499	1,637,288.00	1,204,059.00	-	-
Total								9,017,094	48,616	12,410,701	15,195,957	-	-

For M/s. Balaji Developers

8. On the basis of the above table, it was submitted that once the income had been offered for various A.Ys, then it cannot be said that the order passed by the Assessing Officer has become erroneous and prejudicial to the interest of the Revenue. He relied upon the decision of the Hon'ble Supreme Court in the case of Malabar Industries Ltd.

9. Per contra, the learned DR submitted that the Assessing Officer has not examined the issue during the scrutiny assessment and had merely relied upon the statement of the assessee. He drew the attention of the Bench to the original assessment order wherein in Para 3 it was mentioned as under:

*"3.0 Facts & Findings of the Case: The case was selected for Limited scrutiny under CASS for A.Y. 2016-17 with a reason to verify "1.Real estate business with high closing stock 2. Sale consideration of property in ITR is less than sale consideration reported in Form 26QB". The assessee was asked to submit relevant submissions.*

*In response, the assessee vide e-filing portal submitted relevant information. As regards the high closing stock the assessee submitted that "We are identifying the turnover under percentage completion*

*method. We have declared turnover(cumulative) of Rs. 13,96,49,302/- upto 31.03.2016. The balance expenditure incurred was transferred to Closing work in progress and the closing work in progress as on 31.03.2016 is Rs. 19,55,59,271/-. A sheet explaining the same is enclosed" Further assessee submitted that "another project Balaji Aavaas is also under progress as the firm has got the plan approval from regulatory during the end of financial year 2015-16. We have transferred the expenditure incurred to closing work in progress amounting to Rs 115,959,853/-, which is one of the main reasons for increasing in closing stock."*

*As regards Sale consideration of property in ITR is less than sale consideration reported in Form 26QB, the assessee submitted that "The activity of the firm is construction of residential flats, the income is offered under the head Income from Business, and we are not having any income which will fall under Income from Capital Gains. Wherever the cost of flat. sold is more than the Rs.50 lakhs, customers are deducting 1% TDS and depositing the same, as our activity is falling under Income from Business, we are offering income under that head and claiming the TDS amount towards our tax liability... As the firm is identifying turnover under percentage more completion method and TDS is deducted by the purchaser only on the flats costing than 50 akhs. hence the turnover declared in the books of accounts and the amounts reflecting in Form No. 26 AS will not match. We submit that the turnover declared and advances received are more than the figures mentioned in Form 26 AS We are enclosing herewith ledger accounts of flats sold for the financial year 2013-14 2014-15 and 2015-16." The submissions of the assessee have been verified and the return of income has been accepted."*

10. It was submitted that the issue has not been examined by the Assessing Officer, therefore, the order is required to be set aside and the learned PCIT was right in invoking the jurisdiction u/s 263 of the I.T. Act.

11. We have heard the rival arguments made by both the sides and perused the material available on record. Admittedly, the Assessing Officer during the original assessment proceedings, had issued a notice u/s 142(1) on 7.5.2018 asking the assessee to furnish the following details:

A) Furnish 26AS for A.Y 2016-17 and reconcile the same with gross receipts/turnover in ROI.

- B) Furnish balance sheet, P&L A/c, Audit Report (if applicable) and with annexures for A.Y 2016-17.
- c) Furnish the details of properties of sold along with capital gains receipt thereof for A.Y 16-17 along with relevant documentary evidences.

12. In response thereto, the assessee had filed its reply dated 9.5.2018. The assessee had also furnished the detailed chart/working in response to the questionnaire No.2 which is placed at pages 29 to 34 of the Paper Book. After considering the reply and the documents placed on record, the Assessing Officer has passed the assessment order on 24.5.18. Admittedly, the present case is not a case of no query raised by the Assessing Officer or no reply submitted by the assessee. Rather in the present case, the assessee furnished a reply in response to the question raised by the Assessing Officer and had taken a plausible stand explaining the mismatch in Form 26AS and the amount received and also had submitted the year of taxation of the receipts and further had made out a case that the assessee has opted for percentage completion method and therefore, the accounting treatment given by the assessee to the receipts is in accordance with law. The learned PCIT despite the above said material had failed to bring on record how the method of accounting opted by the assessee was erroneous and prejudicial to the interest of the Revenue when the method of accounting opted by the assessee was proper under AS-7 and further the learned PCIT has also failed to bring on record after making the inquiries how the order of the Assessing Officer has become prejudicial to the interest of the revenue and erroneous. More particularly, when all the receipts are duly reflected in the subsequent A.Ys by following the percentage completion method.

In our view, the view of the Assessing Officer is a plausible view and merely because the learned PCIT holds a different view, then that of the Assessing Officer, this cannot be a ground to cancel the order of the Assessing Officer being erroneous and prejudicial to the interest of Revenue. There is a difference between inadequate inquiries and lack of inquiry. In the present case sufficient and adequate enquiries were made by the Assessing Officer. Merely because the Assessing Officer had not written a detailed and elaborate order for accepting the submissions of the assessee, the same cannot be a ground to declare the order of the Assessing Officer as nonest.

14. Further, the learned PCIT had only pointed out the alleged mismatch between the payment accounted for and TDS deducted. The above-said mismatch had been duly explained by the assessee during the assessment proceedings as well as in the revision proceedings, as the said payment (difference) was reflected in the subsequent year. In view of the above, it cannot be said that the order of the Assessing Officer was prejudicial to the interest of the Revenue. Therefore, the order passed by the learned PCIT u/s 263 of the Act being not in accordance with law is cancelled.

15. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 21<sup>st</sup> June, 2023.

<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated June, 2023.  
*Vinodan/sps*

Copy to:

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3	Pr. CIT-4, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*