

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

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

आयकर अपील सं./ I.T.A. No.120/Viz/2020

(निर्धारण वर्ष / Assessment Year: 2012-13)

Asst. Commissioner of Income
Tax, Circle-2(1),
Vijayawada.

Vs.

Sri Potluri Ravi, Smt. Potluri
Annapurna, Ms. Potluri
Madhavi & Smt. Surya Vijaya
Maruthi (L/Rs of Late Potluri
Babu Rao), D.No. 29-23-27,
Tadepallivari Street,
Suryaraopet, Vijayawada,
Andhra Pradesh – 520002.

C.O. No.31/Viz/2020

(In आयकर अपील सं./ I.T.A. No.120/Viz/2020)

(निर्धारण वर्ष / Assessment Year: 2012-13)

Sri Potluri Ravi, Smt. Potluri
Annapurna, Ms. Potluri
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Maruthi (L/Rs of Late Potluri
Babu Rao), D.No. 29-23-27,
Tadepallivari Street,
Suryaraopet, Vijayawada,
Andhra Pradesh – 520002.

Vs.

Asst. Commissioner of Income
Tax, Circle-2(1),
Vijayawada.

(Cross Objector)

(Appellant in appeal)

अपीलार्थी की ओर से/ Assessee by

:

Sri C. Subrahmanyam, AR

प्रत्यार्थी की ओर से / Revenue by

:

Sri ON Hari Prasada Rao, Sr. AR

सुनवाई की तारीख / Date of Hearing

:

16/05/2023

घोषणा की तारीख/Date of

:

17/07/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), Vijayawada in Appeal No. 30/CIT(A)/VJA/2015-16, DIN: ITBA/APL/M/250/2019-20/1023529519(1), dated 31/12/2019 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2012-13, dated 31/3/2015.

2. Brief facts of the case are that the assessee being an individual filed his return of income for the AY 2012-13 admitting a loss of Rs. 10,45,529/- on 26/03/2014. The case was selected for scrutiny and notices U/s. 143(2) dated 30/09/2014 was issued and served on the assessee. Due to change in the jurisdiction of the Assessing Officer, further notice U/s. 142(1) and 143(2) were issued and served on the assessee. In response, the assessee's Authorized Representative appeared from time to time and furnished the information called for. Considering the submissions made by the Ld. AR, the Ld. AO referred the matter to the Ld. Departmental Valuation Officer [DVO] U/s. 142A of the Act for the building construction completed during the year

which was leased. The Ld. DVO furnished the Valuation Report by valuing the property at Rs. 5,52,54,000/-. The Ld. AO submitted the copy of the report to the assessee inviting his objections. The assessee raised three objections which were forwarded to the Valuation Officer for his comments. In the mean time the assessee also filed the independent Registered Valuer's Report estimating the cost of construction at Rs. 298.36 lakhs as against Rs. 322.23 lakhs as claimed by the assessee. Since the assessee did not maintain the books of accounts, the Ld. AO did not accept the valuation of the independent Registered Valuer and therefore adopted the value of the Ld. DVO. The assessee contested that he had apparently not received the Annexure-1 to the Valuation Report which was later forwarded to the assessee along with the notice U/s. 142(1) dated 28/03/2015 with the request to the assessee to furnish his objections by 30/03/2015. The assessee sought one week time to furnish his comments but the Ld. AO completed the assessment on 31/3/2015, being the time barring date. The Ld. AO thus added an amount of Rs. 2,30,30,522/- being the difference in valuation between the Ld. DVO's report and the amount shown in the books of account of the assessee. Aggrieved by the additions, the assessee filed an appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the primary objection of the assessee was with respect to the addition of Rs. 2,30,30,522/- as unexplained investment without providing adequate opportunity to file objections to the Ld. DVO report. The Ld. CIT(A) considering the written submissions made by the assessee contending objections in respect of the Ld. DVO's report, forwarded the same to the Ld. AO vide letter dated 24/08/2015 with a request to forward the same to the Ld. DVO for obtaining his comments and furnish a remand report. In response, the Ld. AO vide letter dated 25/01/2016 furnished the remand report. A copy of the remand report was then forwarded to the assessee vide letter dated 9/2/2016 requesting the assessee to furnish the rejoinder, if any. The assessee furnished the rejoinder before the Ld. CIT(A) on 11/07/2017. Further, the assessee also furnished additional written submissions on 20/09/2019 before the Ld. CIT(A). Considering the submissions made by the assessee, the Ld. CIT(A) granted relief to the extent of Rs. 2,08,01,415/- and partly allowed the appeal of the assessee. Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

4. Before the Tribunal, originally the Revenue has raised Eight grounds of appeal and later revised the same which is as follows:

- "1. The Ld. CIT(A) is not justified in allowing the appeal without taking into account the facts and merits of the case.
2. The Ld. CIT(A) is erred in granting relief of Rs. 19,36,118/- on the ground that there is totaling mistake that occurred in arriving at the cost incurred by the assessee at Rs. 1,30,03,206/- as
- (i) It is evident from Annexure-II of valuation report though the cost incurred by the lessee towards flooring was mentioned at Rs. 19,36,118/-, the same amount was not included in the cost of construction estimated at Rs. 682.60 lakhs by valuation officer but only an amount of Rs. 8,58,893/- was included.
 - (ii) The amount of Rs. 19,36,118/- incurred by lessee towards flooring has not been included in the cost of construction estimated by Valuation Officer and therefore there is no need for reducing the amount.
 - (iii) It is clear from para 6 of the valuation report that the cost of construction estimates includes an amount of Rs. 1,30,06,000/- towards cost of interiors & Special electrical works only incurred by lessee.
 - (iv) There was no totaling mistake or omission by the Valuation Officer in arriving at cost incurred by the assessee and only an amount of Rs. 1,30,06,626/- was included in the cost of construction estimated for which deduction was allowed by the AO.
 - (iv) There was no totaling mistake or omission by the Valuation Officer in arriving at cost incurred by the lessee and only an amount of Rs. 1,30,06,626/- was included in the cost of construction estimated for which deduction was allowed by the AO.
3. The Ld. CIT (A) is not justified in holding that the lessee has incurred the entire expenditure of Rs. 66,13,127/- towards electrical installations and directed to reduce the balance cost of Rs. 42,12,602/- (Rs. 66,13,127 - Rs. 24,00,525/-) incurred by lessee from estimated cost of construction as
- (i) It is clear from clause 10, 11 & 12 of the lease agreement that the said clause does not mention anything about electric fittings.
 - (ii) The cost of construction included by the Valuation Officer of Rs. 44,36,987/- towards internal electrical

fittings are in respect of internal wiring in a complete building before giving on lease.

(iii) The lessee has done extra lighting system in ceiling, the cost of which was estimated at Rs. 24,00,525/- by the Valuation Officer and the same was reduced from the cost of construction.

4. The Ld. CIT(A) ought to have consider that the Valuation Officer has arrived the reasonable cost of construction based on weighted average cost Index 120 which has been derived from the approved cost indices prevailing during the period of construction of Vijayawada and thus erred in allowing 15% deduction towards variation in the CPWD rates and the local rates.

5. The Ld. CIT(A) erred in allowing 15% deduction towards variation in the CPWD rates and the local rates as the case laws relied on by the assessee is not relevant since the case law pertains to construction that was carried out in the moffusil area whereas the present construction is in the centre of City.

6. The Ld. CIT (A) failed to consider the fact that the assessee did not furnish ledger account along with bills & Vouchers before the Valuation Officer and the work is executed through contract and hence the assessee is not eligible for rebate towards self supervision.

7. The Ld. CIT(A) is erred in allowing 10% deduction towards self-supervisions as the work is executed through contract which was clearly mentioned in the Valuation report.

8. Any other grounds that may be urged at the time of hearing."

5. Grounds No. 1 & 8 are general in nature and need no adjudication.

6. With respect to Ground No.2, the Ld. DR argued that the Ld. CIT(A) has granted relief of Rs. 19,36,116/- citing there is a mistake in totaling in Annexure-II of the Valuation Report. The Ld. DR further submitted that in the Valuation Report of the Ld. DVO an amount of Rs. 8,58,893/- only was included by the Ld. DVO in arriving at the total cost of construction to the assessee. The Ld. DR therefore pleaded that the relief granted by the Ld. CIT(A) be restricted to Rs. 8,58,893/-only. Per contra, the Ld. AR relied on the order of the Ld. CIT (A).

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We find from Annexure-I to the Valuation Report of the Ld. DVO vide Report No. 1: 02: 1470 in Item No.3 being the addition for cost of superior items provided in the building in place of items provided as per specifications of Plinth Area Rates (PAR) has included Rs. 8,58,893/- towards cost of flooring. However, in Annexure-II, while valuing the flooring charges incurred by the lessee M/s. Kalyan Jewellers the Ld. DVO valued at Rs. 19,36,116/-. As per clause 11 and 12 of the lease agreement entered on 12th March 2011, the lessee has to do the interiors and exterior installations including the decorations

which shall not be claimed with the lessor. We therefore find that the Ld. CIT(A) has erred in adopting the valuation of Rs. 19,36,116/- incurred by the lessee and reducing it from the cost of construction of the assessee instead of Rs. 8,58,893/- incurred by the assessee as per Annexure-I of the Ld. DVO report. We therefore direct the Ld. AO to adopt Rs. 8,58,853/- as cost of flooring which needs to be reduced from the cost of construction of the assessee. Thus, this Ground raised by the Revenue is partly allowed.

8. With respect to Ground No.3 regarding the deletion of addition of Rs. 42,12,602/- by the Ld. CIT(A), the Ld. DR submitted that the cost of electrical fittings is with respect to internal wiring and hence it should not be allowed. The Ld. DR further submitted that as per the Ld. DVO report the lessee has incurred Rs. 24,00,525/- as detailed in Annexure-II and the Ld. DVO has estimated the cost of internal electrical installations at Rs. 66,13,127/- out of which Rs. 24,00,525/- was incurred by the lessee and therefore the Ld. AO has rightly allowed the same. The Ld. DR therefore pleaded that the deletion of addition made by the Ld. CIT(A) to the extent of Rs. 42,12,602/- be deleted.

Per contra, the Ld. AR submitted that the lessee M/s. Kalyan Jewellers has furnished a letter to the Ld. DVO that it has incurred a cost of Rs. 66,13,127/- towards electrical fittings. The Ld. AR argued that the Ld. DVO considered only the cost to the extent of Rs. 24,00,525/- as cost of electrical fittings incurred by the lessee. The Ld. AR also referred to the clause No. 10 & 11 of the Lease Agreement that except the cost of the civil works such as strong room, toilets and brick work for wall and also arrange to provide 15KVA power, water connection and provide water storage tank, the lessee has to bear the cost of interiors. Further, the Ld. AR submitted that the electrical installations are to be borne by the lessee as per the lease agreement. The Ld. AR further submitted that the lessee has also confirmed the same vide letter dated 6/3/2015 submitted to the Ld. DVO that the lessee has incurred a cost of Rs. 66,13,127/-. He therefore pleaded that the order of the Ld. CIT(A) be upheld on this ground.

9. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly the lessee M/s. Kalyan Jewellers has furnished a letter dated 6/3/2015 to the Ld. DVO that it has

incurred a cost of Rs. 66,13,127/- towards electrical fittings. Further, on perusal of the lease agreement, we find that the lessee was not claiming cost of interiors and exteriors from the lessor. Further, from Clause-11 and 12 of the Lease Agreement we find that the lessor shall bear only the cost of Civil Structure side walls whereas the interiors and exterior installations are to be done by lessee at their own cost. Further, the Ld. Revenue Authorities have also not disputed the cost incurred by the lessee towards electrical installations. Considering these facts as stated above, we find that the Ld. CIT(A) has rightly directed the Ld. AO to deduct Rs. 42,12,602/- [Rs. 66,13,127 – Rs. 24,00,525] from the cost of construction of the assessee. We therefore find no infirmity in the order of the Ld. CIT(A) on this ground and hence this ground raised by the Revenue is dismissed.

10. With respect to Grounds No. 4, 5, & 6 regarding the deduction of 15% towards variation in the CPWD rates and the local rates, the Ld. DR relied on the order of the Ld. AO. Per contra, the Ld. AR relied on the decision of the Coordinate Bench in ITA No. 573/Viz/2019 (AY 2014-15), dated 15/06/2022 in the case of M/s. Hillocks Hotels Pvt Ltd and pleaded that the same may be applied in the case of the assessee.

11. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The Ld. DVO in his valuation report has not considered the PAR [Plinth Area Rates] as per the State PWD of the Andhra Pradesh Government. The Ld. DVO has estimated the cost of construction on the Plinth Area Rate 2007 approved by the CBDT and weighted average Cost Index 120 as has been derived from the approved cost indices prevailing during the period of construction at Vijayawada. The Ld. DVO also stated in his report that no Cost Index was given for PAR. The jurisdictional Bench of the ITAT, Visakhapatnam has allowed the rebate of 15% towards the difference between the CPWD rates and State PWD rates in many cases including the case cited by the Ld. AR ie., in the case of M/s. Hillocks Hotels Pvt (supra). Consistently following the various decisions of the jurisdictional Bench of ITAT, the Ld. CIT(A) has rightly directed the Ld. AO to adopt 15% towards variation between the CPWD rates and State PWD rates as stated in para 45, page 45 of his order which is reproduced below:

"45. In the second category of objections raised by the L/R of the assessee, it was contended that a deduction of 15% may be allowed for the variation between the CPWD rates and the local

rates as the local rates are lower compared to the rates adopted by CPWD for estimation of the cost of construction. In support of this contention, the L/R of the assessee placed reliance on the decision of the Hon'ble ITAT, Bangalore in the case of C. Sankara Reddy vs. DCIT and decision of the Hon'ble ITAT, Visakhapatnam in the case of D. Satyanarayana vs. ACIT. The contention of the L/R of the assessee is found to be acceptable as the same is supported by the decision of the Hon'ble ITAT, Chennai in the case of DCIT vs. Smt. C.K. Sumathy (2011) 44 SOT 65 and the decision of the Hon'ble ITAT, Visakhapatnam in the case of D. Satyanarayana vs. ACIT in IT(SS)A No. 1/Vizag/2012. It is therefore held that the assessee is entitled to deduction of 15% towards variation in the CPWD rates and the local rates. The AO is directed accordingly."

12. Based on the principles of consistency we find no infirmity in the order of the Ld. CIT(A) on this ground and hence, these grounds raised by the Revenue are dismissed.

13. With respect to Ground No. 7 regarding the deduction of 10% towards self-supervision, the Ld. DR relied on the order of the Ld. AO. Per contra, the Ld. AR relied on the decision of the jurisdictional Bench in ITA No. 573/Viz/2019 (AY 2014-15), dated 15/06/2022 in the case of M/s. Hillocks Hotels Pvt Ltd (supra).

14. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. The jurisdictional Bench of the ITAT, Visakhapatnam has allowed self supervision charges at 10% in many cases including the case cited by the Ld. AR ie., in the case of M/s.

Hillocks Hotels Pvt (supra). Consistently following the decisions of the jurisdictional Bench of ITAT, the Ld. CIT(A) has rightly directed the Ld. AO to adopt 10% as stated in para 46, page 45 after discussing the issue at length and held as under:

"46. It was also pointed out by the L/R of the assessee that the building was constructed by the assessee using own labour and no contract was given to anyone for construction. It was accordingly contended that the observation of the DVO that rebate for self-supervision cannot be allowed is erroneous and self-supervision rebate of 10% is required to be allowed to arrive at the correct cost of construction of the building. In support of this contention, the L/R of the assessee placed reliance on the decision of the Hon'ble Bangalore in the case of C. Sankara Reddy vs. DCIT and decision of the Hon'ble ITAT, Visakhapatnam in the case of D. Satyanarayana vs. ACIT. The contention of the L/R of the assessee is found to be acceptable as the same is supported by the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Om Overseas (2011) 16 taxmann.com 184, wherein it was held that deduction for self supervision should be allowed at 10%. This contention of L/R of the assessee is also supported by the decision of the Hon'ble ITAT, Visakhapatnam in the case of D. Satyanarayana vs. ACIT in IT(SS)A No.1/Vizag/2012. It is therefore held that the assessee is entitled to rebate of 10% towards self-supervision. The Ld. AO is directed accordingly. Ground No.1 of appeal is therefore partly allowed."

15. Based on the principles of consistency we find no infirmity in the order of the Ld. CIT(A) on this ground and hence, these grounds raised by the Revenue are dismissed.

16. In the result, appeal of the Revenue is partly allowed.

17. With respect Cross Objection raised by the assessee, at the time of hearing, the Ld. AR submitted that the assessee's Cross

Objection is not pressed. Therefore, the CO raised by the assessee is dismissed as not pressed.

Pronounced in the open Court on the 17th July, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 17.07.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sri Potluri Ravi, Smt. Potluri Annapurna, Ms. Potluri Madhavi & Smt. Surya Vijaya Maruthi (L/Rs of Late Potluri Babu Rao), D.No. 29-23-27, Tadepallivari Street, Suryaraopet, Vijayawada, Andhra Pradesh – 520002.
2. राजस्व/The Revenue – ACIT, Circle-2(1), Ground Floor, CR Buildings, MG Road, Vijayawada, Andhra Pradesh – 520002.
3. The Principal Commissioner of Income Tax, Vijayawada.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam