

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

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

ITA No.86/Hyd/2023		
Assessment Year: 2016-17		
Shri Shashi Ajit Shah Hyderabad PAN:AFVPS5230F (Appellant)	Vs.	Dy. C. I. T. Circle 9(1) Hyderabad (Respondent)
Assessee by:	Smt. Mrudulatha Devdas, CA	
Revenue by:	Smt. K Haritha, DR	
Date of hearing:	01/08/2023	
Date of pronouncement:	04/08/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 25.3.2021 of the learned Pr.CIT-4, Hyderabad, relating to A.Y.2016-17.

2. There is a delay of 617 days in filing of this appeal by the assessee for which the assessee has filed a condonation application alongwith an affidavit explaining the reasons for such delay which is due to the prevailing COVID period and subsequently the death of the mother of the Chartered Accountant. Further, the assessee also filed medical certificate of the concerned Chartered Accountant who underwent angioplasty after the death of his mother. After considering the contents of the

condonation petition filed along with the affidavit and after hearing the learned DR, the delay in filing of this appeal by the assessee is condoned and the appeal is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of construction. He filed his return of income on 17.10.2016 for the impugned A.Y 2016-17 declaring total income of Rs.3,48,99,980/-. Subsequently the case was selected for scrutiny under CASS under limited category to verify whether the contract receipts/fees have been correctly offered for tax. Statutory notices u/s 143(2) & 142(1) were issued to the assessee in response to which the assessee appeared before the Assessing Officer and filed certain details.

3.1 During the course of assesment proceedings, the Assessing Officer noted that the sales turnover offered in ITR is less than the receipt reflected in Form 26AS. On being asked by the Assessing Officer to explain the difference in receipts, the assessee replied that there is a difference of Rs.13,42,583/- which is due to the security deposit withheld by the authorities. However, the Assessing Officer did not accept the explanation given by the assessee on the ground that the whole receipts have to be offered to tax in the year of recognition of income irrespective of the year of actual receipts in Form 26AS. According to the Assessing Officer, in most of the works contracts, certain amount of contract is retained in the form of security deposit or retention money or under any other nomenclature. However, such deduction does not partake the character of expenditure as such and withholding is made only as a precautionary measure and is generally returned after the completion of the contract

successfully. The Assessing Officer, in view of the above, rejected the claim of the assessee and made addition of Rs.13,42,583/- to the total income of the assessee being the difference between Form 26AS and receipts shown in the P&L Account.

4. Subsequently, the learned PCIT examined the record and noticed that the order is erroneous in so far as it is prejudicial to the interest of the Revenue for the following reasons:

“i) While completing the assessment, the Assessing Officer has not thoroughly verified the unsecured loans of Rs.56,50,000/- and investments made during the year of Rs.7,00,000/-.

It is observed that from the data available on record, that as per 26AS, the assessee had received contract receipts to the tune of Rs.10,31,63,099/- whereas the contract receipts offered in the return of income filed for the A.Y 2016-17 was at Rs.9,80,50,135/-. Hence there is a difference of Rs.60,78,670/- needs to be brought to tax.”

4.1 Since the assessee did not respond to the show-cause notice issued by the PCIT, the PCIT set aside the order passed by the Assessing Officer with a direction to him to re-do the assessment de-novo by observing as under:

5. I have carefully considered the facts of the case and material available on record. The Assessing Officer has simply accepted the assessee's submission that there is a difference of Rs. 13,42,583 due to security deposits withheld by the authorities and completed the assessment accordingly. On verification it is observed that the Assessing Officer had not called for reconciliation statement regarding the assessee's contractual receipts. No details are available in the records reconciling the difference in contract receipts as per Form 26AS and the figures in the P & L account to the tune of Rs. 60,78,670.

6. In view of the above, the order passed u/s. 143(3) of the Act by the Assessing Officer on 18.12.2018 is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the assessment order passed by the assessing officer u/s. 143(3) dated 18-12-2018 is set-aside and the assessing officer is directed to re-do the assessment De novo with directions to obtain the reconciliation for the difference in gross receipts as per P & L account and as per 26 AS and complete the assessment as per law and after affording reasonable opportunity to the assessee.

7. This order is passed as per extended time line given by the Gazette Notification in S.O.2033(E) issued by the Ministry of Finance on 24-06-2020.

5. Aggrieved with such order of the learned PCIT the assessee is in appeal before the Tribunal by raising the following grounds:

“(1) The order of the learned Principal Commissioner of Income Tax (Pr CIT) in holding that the order passed U/s. 143(3) on 18/12/2018 is erroneous and prejudicial to the interests of the Revenue which is wholly unsustainable both on facts and in law.

(2) The Ld. Pr. CIT on a wrong foundation of reasoning arising out of the non-appreciation of facts came to an erroneous conclusion that the order passed by the Assistant Commissioner of Income Tax, Circle-15(1), Hyderabad [AO] u/s. 143(3) on 18/12/2018 is erroneous and prejudicial to the interests of the Revenue.

(3) The Pr. CIT failed to note during the assessment u/s. 143(3) the Ld. ACIT, Circle-15(1), Hyderabad had raised specific queries in relation to reconciliation of the contract receipts as reflected in 26AS and the financial records of the appellant and the appellant had given suitable replies to the Assessing Officer on the subject and thereafter due application of mind the Learned ACIT, Circle-15(1), Hyderabad found that the difference amount only was to the extent of Rs.13,42,583/- which was added while completing the assessment u/s. 143(3) on 18/12/2018 and therefore the Ld. Pr. CIT erred in holding that the order passed U/s. 143(3) on 18/12/2018 is erroneous and prejudicial to the interests of the Revenue.

(4) The Ld. Pr. CIT erred in quantifying the difference amount in contract receipts at Rs.60,78,670/- as against the quantum to Rs. 13,42,583/- determined by the Ld. ACIT, Circle 15(1), Hyderabad and therefore the order passed by the Ld. Pr. CIT in holding that the order passed U/s. 143(3) was erroneous and prejudicial to the interests of the Revenue which is totally contrary to the facts and evidence on record.

(5) The Ld. Pr. CIT failed to note that the entire case of the appellant was selected for scrutiny under CASS under limited category to verify whether the contract receipts have been correctly offered for tax and thus the question of treating the order passed u/s. 143(3) as erroneous and prejudicial to the interests of the Revenue for a limited purpose but erred in coming to the conclusion that the order passed u/s. 143(3) was erroneous and prejudicial to the interest the Revenue.

(6) Any other ground or grounds that may be raised at the time of hearing of the appeal. “

6. The learned Counsel for the assessee referring to the reply given by the assessee to the Assessing Officer vide letter dated

15.12.2018, copy of which is placed at page 1 to 2 of the Paper Book, submitted that the assessee has given due reconciliation to the Assessing Officer and the Assessing Officer after verification of the same has made addition to the tune of Rs.13,42,583/- and therefore, there is due application of mind by the Assessing Officer to the issue raised by the PCIT in the notice u/s 263. So far as the other issues raised by the PCIT that the Assessing Officer has not thoroughly verified the unsecured loan of Rs.56,50,000/-matter and the investment made during the year is Rs.7,00,000/- are concerned, she submitted that when the case was selected for limited scrutiny under CASS for the purpose of verifying only the difference in the contract receipt as per Form 26AS and the amount as per the P&L account, the Assessing Officer could not have travelled beyond the reasons for which the case has been selected for scrutiny. She accordingly submitted that the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue and therefore, in absence of fulfilment of the twin conditions, the Pr. CIT could not have invoked the provisions of section 263 of the I.T Act. Relying on various decisions, she submitted that once the Assessing Officer has taken a possible view while passing the order u/s 143(3) of the I.T. Act, the Pr.CIT is not justified in invoking the provisions of section 263 of the I.T. Act.

7. The learned Counsel for the assessee referred to the following decisions:

- a) Hon'ble Supreme Court in the case of Pr.CIT vs. Cartier Leafin (P) Ltd reported in (2023) 146 Taxmann.com 281 (S.C)

- b) Hon'ble Supreme Court in the case of CIT vs. G.M. Mittal Stainless Steel (P) Ltd reported in (2003) 263 ITR 255 (S.C)

8. The learned DR, on the other hand, heavily relied on the order of the learned PCIT. She submitted that the Assessing Officer has not thoroughly examined the difference of contract receipts as reflected in Form 26AS and the figures in the P&L account which is to the tune of Rs.60,78,670/-. The Assessing Officer has made addition to the extent of Rs,.13,42,583/- only as per the reconciliation statement given by the assessee and has completely ignored the huge difference of Rs.60,78,670/-. Further, the Assessing Officer has not at all verified the unsecured loan of Rs. 56,50,000/- and investment of Rs.7,00,000/- made during the year. According to the learned DR, although the case was selected for limited scrutiny, however, when there is huge unsecured loan of Rs.56,50,000/- and investment of Rs.7.00 lakhs made during the year, the Assessing Officer should have converted the limited scrutiny to complete scrutiny by taking necessary approval from the appropriate authority. In any case she submitted that when the difference between the contract receipt as per Form 26AS and the P&L Account is at Rs.60,78,670/-, the Assessing Officer should not have closed his eyes by simply accepting the reconciliation of the difference to the tune of Rs,.13,42,583/-. Thus, the order has become erroneous as well as prejudicial to the interest of the Revenue and therefore, the learned PCIT is fully justified in invoking the provisions of section 263 of the I.T. Act. She accordingly submitted that the grounds raised by the assessee should be dismissed.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned PCIT 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 assessee in the instant case has filed his return of income on 17.10.2016 declaring total income of Rs.3,48,99,980.-. The case was selected for limited scrutiny under CASS to verify as to whether the contract receipts/fees have been correctly offered to tax. We find during the course of assessment proceedings, the Assessing Officer asked the assessee to explain the difference in receipts, since the income offered in the ITR was less than the amount shown in Form 26AS. We find the assessee replied that there is a difference of Rs.13,42,583/- which the Assessing Officer accepted and made addition of the same to the total income of the assessee. We find the learned PCIT examined the record and noted that the difference of contract receipts as shown in Form 26AS and as reflected in P&L Account is Rs.60,78,670/- and not Rs.13,42,583/-. Further, the Assessing Officer has not examined thoroughly the unsecured loan to the extent of Rs.56,50,000/- and investment made during the year to the tune of Rs.7.00 lakhs. He therefore, issued a show cause notice asking the assessee to explain as to why the provisions of section 263 should not be invoked since the order passed by the Assessing Officer has become erroneous as well as prejudicial to the interest of the Revenue. We find in absence of any reply filed by the assessee, the learned PCIT held the order to be erroneous and prejudicial to the interest of the Revenue for which he set aside the order with a direction to the Assessing Officer to re-do the assessment de novo after considering the reconciliation of the difference in contract receipts as per P&L account and as per Form 26AS.

10. It is the submission of the learned Counsel for the assessee that since the Assessing Officer during the course of assessment proceedings has specifically asked for the reconciliation of the difference which the assessee vide letter dated 15.12.2018 has explained, therefore, there is due application of mind by the Assessing Officer and therefore, the order is neither erroneous nor prejudicial to the interest of the Revenue and therefore, the learned PCIT is not justified in invoking the provisions of section 263 of the I.T. Act. It is the submission of the learned DR that when the Assessing Officer has not applied his mind properly and has not at all considered the difference of Rs.60,78,670/- as per Form 26AS and income returned in the P&L account the order has become erroneous as well as prejudicial to the interest of the Revenue and therefore, the PCIT is fully justified in invoking the provisions of section 263 of the I.T. Act.

11. We do not find any infirmity in the order of the learned PCIT in setting aside the order with a direction to the Assessing Officer to redo the assessment de novo by calling for explanation from the assessee regarding the difference in the contract receipt as per Form 26AS and the income as declared in the P&L Account. It is an admitted fact that the difference in the contract receipt as per Form 26AS and the figures in P&L account is to the tune of Rs.60,78,670/- whereas the Assessing Officer in the order passed u/s 143(3) dated 18.12.2018 has accepted the contention of the assessee that the difference is only to the tune of Rs.13,42,580/-. Even in the assessment order passed u/s 143(3) r.w.s 263 dated 20.03.2022, we find the Assessing Officer has computed the difference in contract receipt at Rs.60,78,670/-. Thus, the order passed by the Assessing Officer u/s 143(3) on

18.12.2018 accepting the difference in the contract receipt as per Form 26AS and P&L Account at Rs.13,42,583/- as against the actual difference of Rs.60,78,670/- has made the order erroneous as well as prejudicial to the interest of the Revenue. Therefore, the learned PCIT, in our opinion, is fully justified in invoking the provisions of section 263 of the I.T. Act. The various decisions relied on by the learned Counsel for the assessee are distinguishable and not applicable to the facts of the present case since the Assessing Officer in the instant case, in complete disregard to the discrepancy in the contract receipt which is visible to the naked eye, has accepted the contention of the assessee that the difference is Rs.13,42,583/- as against the actual difference of Rs.60,78,670/-. Therefore, the order of the Assessing Officer has become erroneous as well as prejudicial to the interest of the Revenue. Therefore, the learned PCIT is fully justified in invoking the provisions of section 263 of the I.T. Act. Accordingly, the same is upheld and the grounds raised by the assessee are dismissed.

12. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 4th August, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 4th August, 2023.

Vinodan/sps

Copy to:

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1	Shri Shashi Ajit Shah, H.No.1-2-28A/1 Street No.3, Habsiguda, Hyderabad 500007
2	Dy. CIT, Circle 9(1) IT Towers, Hyderabad
3	Pr. CIT-4, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order