आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" , HYDERABAD

BEFORE

SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

आ.अपी.सं / **ITA Nos. 674 & 675/Hyd/2022**
(निर्धारण वर्ष / Assessment Years: 2014-15 and 2017-18)

The Asst.Commissioner of Income Tax, Central Circle – 1(3), Hyderabad.	Vs.	M/s. Green City Estates, Nellore. PAN : AAKFG7744F.
अपीलार्थी / Assessee		**प्रत्यर्थी** / Respondent

आ.अपी.सं / **ITA Nos.273 and 274/Hyd/2023**
(निर्धारण वर्ष / Assessment Years: 2014-15 and 2017-18)

M/s. Green City Estates, Nellore. PAN : AAKFG7744F.	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(3), Hyderabad.
अपीलार्थी / Assessee		**प्रत्यर्थी** / Respondent

निर्धारिती द्वारा/Assessee by: Shri A. Srinivas.
राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidiya, CIT-LD. DR & Shri Kumar Adithya, Sr.A.R.

सुनवाई की तारीख/Date of hearing: 31/07/2023
घोषणा की तारीख/Pronouncement on: 31/07/2023

आदेश / **O R D E R**

PER LALIET KUMAR, JM:

These cross appeals filed by the assessee and Revenue are directed against the separate orders of Commissioner of Income Tax (Appeals) – 11, Hyderabad dated 07.09.2022 passed u/s 153A of the Income Tax Act, 1961 (in short 'Act') for the assessment years 2014-15 and 2017-18.

2. As the facts of the case in the captioned appeals are identical, except the amounts involved, we are reproducing the facts in ITA No.674/Hyd/2022 for A.Y. 2014-15 for the sake of brevity.

3. The brief facts of the case are that the assessee firm filed its return of income for AY 2014-15 on 26.11.2014, declaring a loss of Rs.74,80,939/-. A search and seizure operation u/s. 132 of the IT Act was conducted on 15.11.2018 in the case of M/s. Ravi Foods & others, in which the assessee was also covered. Subsequently, notice u/s. 153A of the Act was issued and the assessee filed its return of income in response to the said notice admitting a loss of Rs.74,80,939/- on 25.11.2019. The Assessing Officer noted that the assessee did not produce books of account during the assessment proceedings and estimated the income of the assessee @15% of the total sales of Rs.18,12,35,700/- during the year i.e. Rs. 2,71,85,355/-. The Assessing Officer has also made an addition of other income of Rs. 8,00,000/-, thereby assessing total income of the assessee at Rs. 2,79,85,355/-.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the ld.CIT(A), who after examining the facts on record had granted partial relief to the assessee by deciding the issue at pages 8 to 15.

5. Feeling aggrieved with the order of ld.CIT(A), Revenue and assessee are now in appeal before us.

6. Before us, the ld.DR had drawn our attention to paragraph 4 of the Assessing Officer's order, where it was mentioned that the AO had made an addition of 2.71 crores to the income of assessee on estimation basis. The ld.CIT(A) had considered the issue and decided on it at pages 8 to 15 of his order. The relevant portion of the order of ld.CIT(A) reads as under :

> *"6. The decision :*
>
> *In the instant case, the assessment was completed u/s. 153A by assessing total income of the appellant at Rs. 2,79,85,355/-. The Assessing Officer noted that the appellant failed to furnish books of account during the assessment proceedings and assessed business income @15% of the total sales made by the appellant during the year. Further, the Assessing Officer has also added other income credited to the P&L Account of Rs. 8,00,000/-. Going in to the facts of the case, a search operation was conducted u/s.132 of the Income Tax Act, 1961 on 15.11.2018 in the group of M/s. Ravi Foods Pvt. Ltd & other related parties, in which the appellant firms was also covered. Subsequently, notices u/s. 153A of the IT Act were issued to the appellant for A.Y. 2013-14 to A.Y. 2018-19 and notice u/s. 143(2) of the Act was issued for AY 2019-20 being the year of Search.*
>
> *It is seen that for all the years under consideration, the Assessing Officer has estimated the profit at 15% of sales made in respective years and in certain years where other income was credited to P&L account, the addition of those items were made over and above the estimation. During*

the course of assessment proceedings, the appellant has submitted the Balance Sheet and P & L account and full details of Trading account items as well as the bank statements of the appellant, the Assessing Officer has not found any defect in the balance sheet or trading account items such as sales, cost of land and commission expenses. The substantial part of the numbers in the P&L Account in cumulation comes from the Trading account as such and only the general expenses detail are other than the Trading account. However, the Assessing Officer noted that the books of accounts have not been produced by the appellant and therefore resorted to estimation at 15% of sales being income of the appellant for all the years under consideration and taxed the appellant accordingly.

It will be important to note that the appellant had submitted various details for all the years under consideration during the course of assessment proceedings, however, did not produce the books of accounts. It is seen that the appellant had also submitted the bank account statements of the appellant firm for all the years under consideration for verification of the Assessing Officer and on primary basis, no defects have been found by the Assessing Officer in the bank statements so submitted which are on records of the assessment folders. This situation applies for all the years under consideration.

It is further seen that during the course of assessment proceedings, the appellant has furnished the details of the project undertaken along with the evidence such as copies of registered sale deeds pertaining to lands purchased from the land owners, details of commission payments along with the TDS deduction proof, details of advance received against the sales and the details of certain expenditure debited to the Profit & Loss account which are substantial in nature. Further, the appellant had submitted the details with respect to sale of plots made such as the name of the buyer, date of registration, document no, the extent of the plot and the consideration received. The appellant had furnished such details for all the years under consideration.

The reply of the appellant regarding the above items as submitted during the course of assessment proceedings are brought out as under:

Xxxxx

From the perusal of the above P & L account, it can be seen that the appellant has submitted during the course of assessment proceedings, all the particulars with regard to the sale of plots, cost of land and commission payments with proper evidences and also the bank statement has been furnished. The above implies that proper evidence has been furnished with regard to substantial items and no defect has been found by the Assessing Officer in that regard.

If one observes the debit side of the P & L account, it is seen that the total expenditure but for partners remuneration, cost of land and commission payments works out to be Rs. 1,23,77,605/-. The appellant has also submitted the details for certain expenses but not proper vouchers

pertaining to such expenses. It is important to note that during the course of Search no primary defect was found in the form of incriminating material and nor the same has been brought out by the Assessing Officer. There is no doubt that the business activity of the appellant is bonafide as can be seen from the details submitted and the perusal of the other financials including the 'P & L account. Therefore, it would meet end of justice to disallow 10% of the expenses across board to the extent of Rs. 1,23,77,605/- as the appellant has not discharged the primary onus of submitting the details in the proper format and vouchers of expenses. In view of the same, the addition is upheld to the extent of Rs.12,37,760/- only and the balance is hereby deleted.

In view of the same, the ground no. 4, 5 and 6 are partly allowed and the ground no. 7 is allowed."

6.1 Ld.DR further submitted the assessee did not produce its books of accounts before the Assessing Officer, however, ld.CIT(A) while adjudicating the appeal has granted relief to the assessee based on certain documents filed at the appellate stage albeit without giving an opportunity of hearing or cross-verifying the documents to the Assessing Officer. Before the Tribunal, ld. DR filed certain documents to show that the relief granted to the assessee by the ld.CIT(A) was not warranted. The ld.DR had submitted that against the sales of Rs. 18.12 crores, assessee allegedly paid a commission to its promoters at Rs.3.12 crores and has deducted the TDS under wrong provision despite that the ld.CIT(A) has granted relief to the assessee. It was submitted that the above said facts coupled with other facts mentioned at pages 10 to 15 of the order of ld.CIT(A) are required to be verified and since they were not verified by the ld.CIT(A) while granting relief to assessee, it was submitted that the matter may be sent back to the Assessing Officer for a fresh examination, as the order of ld.CIT(A) was cryptic, non-speaking and perfunctory order.

7. On the other hand, the ld. AR had submitted that all relevant documents, including books of accounts, ledgers and sale deeds were provided to the ld.CIT(A) and the ld.CIT(A) after verifying all the documents has granted the relief to the assessee.

8. We have heard the rival submissions and perused the material on record. Admittedly, at page 10 of the order of ld.CIT(A), the ld.CIT(A) has considered certain documents like ledger book, profit and loss account and other sale documents etc, part of said documents only submitted to the Assessing Officer and remaining part of documents were filed at appellate stage. During the assessment, the Assessing Officer has made an estimation by assessing the income of the assessee at 15% of sales. However, in the present case, as mentioned hereinabove in the order of ld.CIT(A), the ld.CIT(A) had only restricted the addition to Rs.12,37,760/- as against the addition of Rs.2,71,85,355/-. In our view, the foundation facts were required to be examined and proved before the revenue authorities by the assessee before ld.CIT(A) coming to the conclusion that the assessee had incurred the expenditure towards the partnership firm, cost of land and commission paid at Rs.1,23,77,605/- and compute the profit of the assessee. In our view, the said exercise was not done at appellate stage.

9. Quite contrary, the ld.CIT(A) restricted the expenditure at 10% on the said expenditure of Rs.1,23,77,605/- without any basis and without examining the facts in detail. In our view, once the Assessing Officer has arrived at the income of the assessee on estimation basis, as the assessee failed to produce the books of accounts etc, then the law requires the ld.CIT(A) to be more judicious and exercise more care to bring on record that the version of the Assessing Officer is not in accordance with the law. But nothing has been brought on record by the ld.CIT(A). The ld.CIT(A) simply accepted the version of the assessee without cross-verification and application of mind. In view of the above facts, we deem it appropriate to remand the matter back to the file of AO for a de novo assessment in accordance with the law. Thus, the appeal of Revenue in ITA No.674/Hyd/2022 for A.Y. 2014-15 is allowed for statistical purposes.

10. In the result, appeal of Revenue in ITA No.763/Hyd/2022 is allowed for statistical purposes.

11. As far as the other appeal i.e., ITA Nos.675/Hyd/2022 for the assessment year 2017-18 is concerned, in view of the submission of both the parties that the issues raised in A.Y. 2017-18 are identical to the other assessment year, except the amounts involved, we for the reasons stated hereinabove while deciding the appeal in ITA No.674/Hyd/2022 and for similar reasons, allow this appeal with similar directions for statistical purposes.

12. Now coming to the appeal of assessee i.e., ITA No.273/Hyd/2023 for A.Y. 2014-15, the order of ld.CIT(A) was passed on 07.09.2022 and the appeal was filed before the Tribunal by the assessee only in May, 2023 and that there was delay in filing the appeal before the Tribunal. Since we have remanded back the appeals of Revenue to the file of Assessing Officer, in the light of the above facts, we deem it appropriate to condone the delay in filing the cross-appeal field by the assessee before us with delay of 197 days. Having condone the delay and admitting the appeal, we also remand back the issues raised in the appeal of the assessee to the file of Assessing Officer with a direction to examine the pleas raised by the assessee and pass a reasoned speaking order after affording opportunity of hearing to the assessee and following the principles of natural justice in accordance with the law. Accordingly, the appeal of the assessee is allowed for statistical purposes.

13. In the result, appeal of assessee in ITA No.273/Hyd/2023 is allowed for statistical purposes.

14. As far as the other appeal of assessee i.e., ITA No.274/Hyd/2023 for A.Y. 2017-18 is concerned, in view of the submission of both the parties that the issues raised in A.Y. 2014-15 are identical to the other assessment year, except the amounts involved, we for the reasons stated hereinabove while deciding the appeal in ITA No.273/Hyd/2023 and for similar reasons, allow this appeal with similar directions for statistical purposes.

15. In the result, both the appeals of assessee are allowed for statistical purposes.

16. To sum up, all the appeals of assessee and Revenue are allowed for statistical purposes. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 31st July, 2023.

Sd/-	**Sd/-**
(R.K. PANDA) **VICE PRESIDENT**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 31st July, 2023.
TYNM/SPS

Copy to:

S.No	Addresses
1	M/s. Green City Estates, Shop No.4, Siva Sai Complex, Pogathota, Nellore – 524001.
2	The Asst.Commissioner of Income Tax / Deputy Commissioner of Income Tax, Central Circle – 1(3), Hyderabad.
3	The PCIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order

S.No.	Details	Date
1	Draft dictated on	31.07.2023
2	Draft placed before author	31.07.2023
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	