

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 K. NARASIMHA CHARY, JUDICIAL MEMBER**

M.A No.13/Hyd/2020 (Arising out of ITA No.265/Hyd/2013)		
Assessment Year: 2007-08		
Dy.Commissioner of Income Tax, Circle 16(2), Hyderabad.	Vs.	M/s. Pragati Green Meadows and Resorts Pvt. Ltd., Hyderabad. PAN : AACCP5283H.
(Applicant/Appellant)		(Respondent)
ITA No.265/HYD/2013		
Assessment Year : 2007-08		
The Asst.Commissioner of Income Tax, Circle 16(3), Hyderabad.	Vs.	M/s. Pragati Green Meadows and Resorts Pvt. Ltd., Hyderabad. PAN : AACCP5283H.
(Appellant)		(Respondent)
ITA No.188/Hyd/2014		
Assessment Year : 2007-08		
M/s. Pragati Green Meadows and Resorts Pvt. Ltd., Hyderabad. PAN : AACCP5283H.		The Asst.Commissioner of Income Tax, Circle 16(3), Hyderabad.
(Cross-Objector / Appellant)		(Respondent / Appellant)
Assessee by:	Sri P. Murali Mohan Rao, C.A.	
Revenue by:	Ms. Sheetal Sarin, Sr. A.R.	
Date of hearing:	18.08.2023	
Date of pronouncement:	30.08.2023	

**आदेश / O R D E R**

**PER R.K. PANDA, VICE PRESIDENT:**

The Revenue has filed this Miscellaneous Application requesting the Tribunal to recall the order passed by the Tribunal in ITA No.265/Hyd/2013 dt.26.08.2019 dismissing the appeal of the Revenue on account of low-tax effect despite the reopening was based on audit objections.

2. The ld. DR referring to the contents of the Miscellaneous Application filed by the Revenue submitted that though the tax effect is below the monetary limit prescribed by the Board, however, the case is covered under exceptional category under section 10(C) of the CBDT Circular No.03/2018 dt.11.07.2018. She accordingly submitted that the order of the Tribunal dismissing the appeal filed by the Revenue on account of low tax effect should be recalled.

3. The learned counsel for the assessee, on the other hand, has no objection for the same.

4. Since admittedly, the reopening of the assessment was made on the basis of audit objections, therefore, the case is covered under the exceptional category under section 10(C) of the CBDT Circular 03/2018 dt.11.07.2018. Therefore, a mistake has crept in the order of the Tribunal which requires rectification. We, therefore, recall the order of the Tribunal and the appeal is fixed for hearing today itself. The M.A. filed by the Revenue is accordingly allowed.

**ITA No.265/Hyd/2013 one Revenue)**  
**ITA No.188/Hyd/2014 (Assessee)**

5. These are cross appeals. The first appeal is filed by the Revenue and the second one filed by the assessee and are directed against the order dt.27.11.2012 of the Commissioner of Income Tax (Appeals) – V, Hyderabad relating to A.Y. 2007-08. For the sake of convenience, these appeals were heard together and are being disposed of by this common order.

6. The facts of the case, in brief, are that the assessee is a company engaged in the business of land development and sale. It filed its return of income on 31.10.2007 declaring total income of Rs.6,97,63,240/-. The return was processed under section 143(1) of the Act on 29.09.2008. Subsequently, the Assessing Officer observed from the balance-sheet that the assessee has secured loans i.e., term loan and for vehicle finance from Andhra Bank to an extent of Rs.12.18 crore and also unsecured loans of Rs.58.87 lakhs. The assessee has claimed expenditure of Rs.1.85 crores under the head 'interest and bank charges' by debiting the same to the profit and loss account. He further noted that the assessee had also given loans and advances to others including to its sister concerns. Further, on verification, he found that the assessee has advanced a loan of Rs.5,25,14,837/- to one of its sister concerns namely, M/s. Pragathi Kamadhenu Finance Limited. However, no interest income has been offered to tax although it has claimed expenditure of Rs.1,85,54,522/- under the head 'interest and bank charges'. In view of the above, the Assessing Officer initiated re-assessment

proceedings under section 147 of the Act after recording the following reasons :

*"2.1 In view of the above, the proceedings u/s 147 were initiated after recording the following reasons:*

*"It was seen from the balance sheet as on 31.3.2007, that the assessee company took secured loans (scheduled -2) of Rs. 12,18,87,3131- during the year from Andhra Pitink (Term Loan Rs.11,35,19,647/- and Rs.83,67,666/- being vehicle finance).*

*Interest and bank charges totaling to Rs.1,85,54,522/- were debited to the Profit. &L A/c for the year ended 31/3/2007 (Apprx. 1522%).*

*It was noticed that the assessee had advanced a loan of Rs.5,25, 14,827/- to M/s Pragati-Kamadhenu Finance Private Limited towards unsecured loans as at 31.3.2006 (sister concern with same directors, as per confirmation letter issued by the assessee). However, interest (minimum 12%) was required to be offered on the above unsecured loans which were not offered as income from other sources (minimum 12%) u/s 56 of IT Act. Loans could not be advanced to sister concern without charging interest and the company itself was paying interest on borrowed funds. Thus, the income escaped assessment for not offering interest as income.*

*In view of the above, I have reason to believe that the income chargeable to tax has escaped assessment within the meaning of section 147 of the IT Act 1961. "*

7. Notice u/s 148 of the Act was issued on 25.02.2011 which was served on assessee on 04.03.2011. Although no return in response to the said notice was filed, however, in response to the statutory notice issued under section 142(1) of the Act, the ld. AR of the assessee appeared before the Assessing Officer from time to time and furnished the information as called for. So far as the question regarding advancing of loan to the sister concern i.e., M/s. Pragathi Kamadhenu Pvt. Limited without charging any interest is concerned, the assessee furnished the following reply which has

been reproduced by the Assessing Officer in the body of the assessment order, which reads as under “

*"We hereby submit that, the company has availed loans from Andhra Bank, Ameerpet branch of Rs.11 crores in the financial year 2005-06 towards resorts project/development situated at Proddutur village, Shankaerpally Mandal, accordingly but of the Project loans we had given Land advances to various parties including M's. Pràgati Kamadhenu Finance Pvt. Ltd. (presently known as Pragati Kamadhenu Estates Pvt. Ltd) and the balance as at 31/3/2007 is of Rs.5,25,14,827/- towards the purchase of land. Further, enclosing ledger account copies in its books of account the assessee furnished a note on secured loans given to its sister concern i.e., Pragati Kamadhenu Finance Private Limited".*

8. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He observed that the assessee company has obtained loans from banks for the purpose of its project i.e., development and sale of land. From the details furnished by the assessee, he noted that assessee is paying interest @ 12.75% whereas no interest has been charged from the sister concern M/s. Pragathi Kamadhenu Pvt. Limited. In the absence of any satisfactory explanation given by the assessee, the Assessing Officer computed the interest @ 12.75% on the interest free advances of Rs.5,25,14,827/- and disallowed an amount of Rs.66,95,640/- by making addition of the same to the total income.

9. In the appeal, the Id.CIT(A) deleted the addition made by the Assessing Officer by observing as under :

*"5.2 I carefully considered the view of Assessing, Officer and submissions made by the AR. The issue under consideration was whether the interest free advance was given to sister concerns on commercial expediency is allowable or not.*

5.3 In the case of *S.A. Builders Ltd. Vs. CIT (A), Chandigarh, [2007] 158 Taxman 74 (SC)*, the Apex court held that borrowed funds advanced to a third party should be for commercial expediency, if it is sought to be allowed u/s. 36(1)(iii), amount advanced to sister concern was by way of commercial expediency, matter was to be remanded to Tribunal for a fresh decision in accordance with law.

5.4 The Hon'ble High Court of Delhi in case of *CIT v. Dalmia Cement (P) Ltd. (2002) 174 CTR (Del) 188* where it was, held that no portion of the interest paid by the assessee on its borrowed funds can be disallowed on the ground that a portion thereof has been diverted to subsidiary company and that the Assessing Officer was not justified in disallowing the assessee company in debiting the interest paid to the bank as revenue expenditure merely because it had given further loan to its subsidiary company.

5.5 By the above judgments of Apex court and Delhi high court, when. the advance was given to sister concern on pure commercial expediency, the expenditure is to be allowed as deduction. That the above loan was advanced by the assessee was purely on commercial expediency and there is no diversion of funds.

5.6. In light of the above judgments and relevant explanations, the addition made is deleted.

6. The next issue relates to the initiation of penalty. The grounds raised by the appellant regarding the additions (*supra*) were adjudicated in favour of the appellant, therefore there cannot be any concealment of income. Further, there is no \*concealment or furnishing of any inaccurate information by the appellant and hence the penalty proceedings u/s. 271(l) (c) are not to be initiated.

7. In this result, this appeal is allowed.

10. Aggrieved with such order of the learned CIT(A), the Revenue is in appeal before us by raising the following ground :

*“The learned CIT(A) erred in deleting the disallowance of interest on borrowed funds of Rs.66,95,640/- in view of interest free advances given to assessee’s sister concerns.”*

11. The assessee has also taken the following grounds :

*“1. The Ld. CIT(A) has erred both in law and on facts of the case in upholding the order of Ld. A.O in the order passed u/s 143(3) r.w.s 147 of the I.T Act 1961.*

*2. The Ld. CIT(A) has erred in upholding the reopening the assessment U/s 148 which is against the settled position of law.*

*3. The Ld. CIT(A) ought to have appreciated the fact that no reassessment proceedings can be initiated u/s 147 of the Act without there being any "new tangible material" on record.*

*4. The Ld. CIT(A) ought to have appreciated the fact that no reassessment proceedings, can be initiated based on the audit objection.*

*5. The Ld. CIT(A) ought to have appreciated the fact that the A.O ought to have issued the reasons for reopening of assessment U/s 147.*

*6. The assessee place a reliance on the order of Hyderabad ITAT in the case of Sri. Ranjith Reddy v/s DCIT - 6(1) in ITA NO 292/H/2012 vide order dated 07/06/2013.”*

11.1 The assessee also raised the following additional ground which reads as under :

*“In view of the Supreme Court’s decision in the case of M/s. National Thermal Power Co., Limited Vs. CIT reported in (1998) 229 ITR 383 (SC), the appellant is justified in taking the grounds of appeal bearing nos. 1 to 6 which have not been raised before the CIT(Appeals).*

12. The learned counsel for the assessee referring to the decision of Hon’ble Supreme Court in the case of National Thermal Power Co., Limited Vs. CIT reported in (1998) 229 ITR 383 submitted that the additional ground is purely a legal ground and all material facts are already available on record and no new facts are required to be

investigated and therefore, the additional ground raised by the assessee should be admitted.

13. Ld. DR on the other hand, objected to the admission of the additional ground raised by the assessee.

14. After hearing both sides and considering the fact that the additional ground raised by the assessee is purely a legal one and all material facts necessary for adjudication of the ground are already available on record, therefore, the additional ground raised by the assessee is admitted.

15. The learned counsel for the assessee, at the outset, submitted that it is an undisputed fact that the case of the assessee was reopened on the basis of audit objections. Referring to page nos.1 and 2 of the paperbook filed by the Revenue, the learned counsel for the assessee drew the attention of the Bench to the same and submitted that at the behest of the Revenue Audit Party vide letter dt.08.06.2010, the Assessing Officer has reopened the assessment. Referring to the letter dt.09.07.2012 issued by the office of the CIT-IV, Hyderabad to the Principal Director of Audit (Central), Saifabad, Hyderabad, the learned counsel for the assessee drew the attention of the Bench to the same and submitted that the Department has accepted the objections raised by the Revenue Audit Party and has stated that the Assessing Officer has taken necessary remedial action by passing order u/s 143(3) r.w.s. 147 of the Act on 07.12.2011.

16. Referring to the decision of Hon'ble Supreme Court in the case of Indian Eastern Newspaper Society Vs. CIT reported in (1979) 2 Taxman 197 (SC), he submitted that Hon'ble Supreme Court in the said decision has held that *the view expressed by internal audit party on a point of law cannot be regarded as "information" for the purposes of initiating proceedings under section 147(b) of the Act.* Referring to the decision of Hon'ble Karnataka High Court in the case of CIT Vs. GMR Holdings Pvt. Limited reported in 407 ITR 439, he submitted that the Hon'ble High Court has held that *re-assessment proceedings under section 147/ 148 of the Act could not be undertaken on a mere change of opinion or audit objection raised by the internal auditors of the Department.* Referring to the decision of Mumbai Bench of the Tribunal in the case of Lionbridge Technologies Pvt. Limited Vs. ACIT in ITA 610/Mum/2018 order dt.27.05.2020 for A.Y. 2008-09, he submitted that the Tribunal in the said decision has held that *re-assessment proceedings on the basis of an audit objection is not valid.* He accordingly submitted that since admittedly the re-assessment proceedings were initiated on the basis of internal audit party objections, the re-assessment proceedings are not valid and therefore, the re-assessment proceedings should be quashed.

17. So far as the merit of the case is concerned, the learned counsel for the assessee heavily relied on the order of learned CIT(A).

18. The ld. DR on the other hand strongly challenged the arguments advanced by the learned counsel for the assessee. She submitted that the report of the internal audit party constitutes an

information and the Assessing Officer is fully justified in reopening the assessment.

19. So far as the merit of the case is concerned, she submitted that when admittedly, the assessee has advanced interest free loans to sister concerns, therefore, the Assessing Officer was fully justified in charging interest @ 12.75% which the assessee is paying to the banks for availing the loan.

20. We have considered the rival arguments made by the sides, perused the orders of Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. There is no dispute to the fact that the re-assessment proceedings were initiated on the basis of objections raised by the audit internal party which read as under :

*No.RAIT/ITRAP XVI/ 10-11/..No.21*

*Dt.08.06.2010.*

*To  
The Deputy Commissioner of Income Tax,  
Circle 16(3),  
Hyderabad.*

*Sir,*

*Sub: PAN: AACCP5283H; Company; PRAGATI GREEN MEADOWS  
AND RESORTS PVT. LTD, Jubilee Hills, Hyderabad; A.Y.  
2007-08; A.O u/s 143(1) dt.Nil, T.I. 69763240/-, Tax  
23482306/- . Pot seen by IAP.*

*...*

*It was seen from Balance-Sheet dt.31.03.2007 that the assessee company took secured loans (schedule 2) of Rs.12,18,87,313/- during the year from Andhra Bank (Term loan) – Rs.11,35,19,647/- and Rs.83,67,666/- being vehicle*

*finance. "Interest and Bank Charges" being an amount of Rs.1,85,54,522/- was debited (expenditure) in the profit and loss account for the year ended 31.03.2007. (Approximate @ 15.22%).*

*During Audit Scrutiny, it was noted that the assessee had given an amount of Rs.525,14,827/- to M/s. Pragati Kamadhenu Finance (Pvt) Limited towards unsecured loans on 31.03.2006. (sister concern with same Directors). (File verified of confirmation letter issued by assessee). However, interest was required to be offered on the above unsecured loans which was not offered as other income. (minimum @ 12%) u/s 56 of I.T. Act. Loans cannot be advanced to sister concerns without charging interest, when the company itself was paying interest on borrowed loan.*

*The income escaped assessment for not offering interest income worked out to Rs.63,01,779/- with a consequential tax effect of Rs.21,21,178/- excluding interest notice u/s 143(2)/148/154 was not issued.*

*Yours faithfully,*

*RAO / ITRAP XVI.*

21. We further find in compliance to the objections raised by the audit party, the CIT-IV, Hyderabad has addressed a letter to the Principal Director of Audit (Central), Saifabad, Hyderabad, stating that the objections raised have been settled, the contents of which read as under :

F.No.CIT-IV /RAP/ 2012-13

To  
The Principal Director of Audit (Central)  
Saifabad,  
Hyderabad.

Sit,

O/o. Addl. Commissioner of Income Tax	Date: 9-7-2012
10 JUL 2012	NOU
रेंज 16 / Range-16.	
आयकर भवन, हैदराबाद -04.	
Aayakar Bhavan, Hyderabad -04.	

Sub: RAP Major objection in the case of M/s Pragathi Green, Meadows Pvt. Ltd., Hyderabad – Asst. Year 2007-08 – settlement of objection – Request - Regarding.

Ref: RAP Major Audit Objection in Para No. 21 of LAR No. U-8/6-016/2010-11 dtd. 2.8.10.  
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Kind reference is invited to the above.


2. In the case of above assessee the RAP(audit) has raised an objection, the gist of which is as under :

*The objection of the RAP is that the assessee has availed secured loans to the extent of Rs. 12,18,87,313/- from Andhra Bank and debited Rs. 1,85,54,522/- to P&L a/c towards interest and bank charges. It was further noticed that the company has advanced loans of Rs. 5,25,14,827/- to its sister concern M/s Pragathi Kamadhenu Finance Ltd., however the interest required to be offered on the above unsecured loans was not offered to income.*

3. The objection raised by RAP is accepted and the assessing officer has taken necessary remedial action by passing an order u/s 143(3) r.w.s. 147 of IT Act on 7.12.2011 wherein the AO disallowed interest of Rs. 66,95,640/- and added to the income. A copy of the order enclosed for perusal.

4. In view of the above, the objection raised may please be treated as settled.

Encl: as above.

Yours faithfully,  
  
( H.SRINIVASULU )  
Commissioner of Income Tax-IV,  
Hyderabad.

22. From the above, it is crystal clear that the re-assessment proceedings were initiated on the basis of audit objections. We find the Hon'ble Supreme Court in the case of Indian and Eastern Newspaper (supra) has held that the opinion of internal audit party of the Income Tax Department on a point of law cannot be regarded as "information" within the meaning of section 147(b) of the Act, 1961. We find the Hon'ble Karnataka High Court in the case of GMR Holdings Pvt. Limited (supra), while deciding an identical issue has held that re-assessment proceedings u/s 147/148 of the Act cannot be undertaken on a mere change of opinion or audit objection raised by the internal auditors of the Department. Similar view has been taken by the Mumbai Bench of the Tribunal in the case of Lionbridge Technologies Pvt. Limited (supra). The various other decisions relied upon by the learned counsel for the assessee also support his case to the proposition that re-assessment proceedings cannot be initiated on the basis of audit objections.

23. In view of the above discussion, we hold that the re-assessment proceedings initiated on the basis of audit objection are not valid in law and accordingly, the re-assessment proceedings are quashed. Since we quash the re-assessment proceedings initiated by the Assessing Officer on the basis of the audit objections, therefore, the grounds raised by the Revenue challenging the deletion on merit become academic in nature and therefore, are not being adjudicated.

24. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

25. To sum up, the Miscellaneous Application filed by the Revenue is allowed and the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed.

Pronounced in the open Court on 30<sup>th</sup> day of August, 2023.

Sd/-

Sd/-

<b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>(RAMA KANTA PANDA)</b> <b>VICE PRESIDENT</b>
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Hyderabad, dated 30<sup>th</sup> August, 2023

**TYNM /PVV SPS**

Copy to:

S.No	Addresses
1	M/s. Pragathi Green Meadows and Resorts Private Limited, 271/A, Road No.10, Banjara Hills, Hyderabad – 500034.
2	The Deputy Commissioner of Income Tax, Circle 16(2), Hyderabad / The Asst. Commissioner of Income Tax, Circle 16(3), Hyderabad.
3	CIT-IV, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*