

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

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

ITA Nos.225 & 226/Hyd/2016		
Assessment Years: 2007-08 & 2008-09		
Sri Bhavani Ventures Hyderabad PAN:ACHFS8168E (Appellant)	Vs.	Dy. CIT Circle 9(1) Hyderabad (Respondent)
Assessee by:	Advocate S Sandhya	
Revenue by:	Shri K. Madhusudan, CIT(DR)	
Date of hearing:	11/10/2023	
Date of pronouncement:	11/10/2023	

ORDER

Per R.K. Panda, Vice-President

The above two appeal filed by the assessee are directed against the separate orders dated 27th November, 2015 of the learned CIT (A)-7, Hyderabad relating to A.Ys.2007-08 & 2008-09 respectively. Since identical grounds have been raised by the assessee in both these appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

2. The above two appeals were earlier dismissed by the Tribunal on the ground that the assessee has availed the benefit under the 'Direct Tax Vivad se Viswas Scheme-2020'. Subsequently, the Tribunal vide M.A. Nos. 58 & 59/Hyd/2023

order dated 4.8.2023 recalled its earlier order. Hence these are recalled matters.

ITA No.225/Hyd/2016 – A.Y 2007-08

3. Facts of the case, in brief, are that the assessee is a partnership firm carrying on business in real estate. A search and seizure operation was conducted in the group of M/s. Shanthi Fire Works on 15.10.2009 during which certain documents belonging to the assessee were found and seized. Accordingly, proceedings u/s 153C were initiated. In response to the notice u/s 153C, the assessee did not file any return of income. Statutory notices u/s 143(2) and 142(1) were issued and served on the assessee. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 153C of the Act determining the total income of the assessee at Rs.37,11,000/- wherein he made addition of Rs.36,11,000/- on account of 3 credits in the Bank account maintained with the Tamil Nadu Mercantile Bank and addition of Rs.1.00 lakh being capital introduced by the Partners.

4. In appeal, the learned CIT (A) dismissed the appeal filed by the by observing as under:

“4. During the course of appellate proceedings, the case was posted for hearing on 19.08.2015. At the request of the appellant, the hearing was adjourned to 27.08.2015. The appellant again sought adjournment and at their request the hearings were further fixed on 07.09.2015, 25.09.2015, 06.10.2015 and 26.10.2015. There was no compliance and as last opportunity, the case was a posted to 05.11.2015. Again, the appellant sought adjournment seeking time to file details. The case Was posted for hearing finally ons20.11.2015 again the appellant did not appear. In spite of so many opportunities given as above, the appellant has not attended the hearings nor produced/furnished any documents/submissions regarding their claim. In view of the above, it is held that the appellant is not interested in pursuing the appeal. Accordingly, the appeal is dismissed.

5 Further, on merits also, it is seen that the Assessing Officer made additions on account of unexplained credits in the bank account maintained by the appellant and amount introduced and capital by partners. No details were furnished by the appellant regarding sources of the same before Assessing Officer nor during the appellate proceedings. In view of the above, the action of Assessing Officer in making additions is confirmed.”

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

1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.
2. The learned Commissioner of Income-Tax (Appeals) erred in deciding the appeal without providing sufficient opportunity. The learned Commissioner of Income-Tax (Appeals) ought to have appreciated the circumstances under the which the appellant had to seek adjournment.
3. The Assessing Officer is not justified in initiating proceedings u/s 153C of the I.T. Act when no information was found during search and seizure proceedings.
4. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in holding that the deposits made with Tamil Nadu Mercantile Bank were not properly explained and further erred in confirming the addition of Rs.36,11,000/- as income of the appellant.
5. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in holding that the capital of Rs.1,00,000/- introduced by the partners represent the income of the appellant.
6. The Assessing Officer erred in confirming the action of the Assessing officer in levying interest u/s 234A and u/s 234B of the I.T. Act.
7. Any other ground that may be urged at the time of hearing.

6. The learned Counsel for the assessee submitted that the additions were not based on any incriminating material found during the search belonging to the assessee and therefore, the entire assessment has to be quashed. So far as merits of the case is concerned, she submitted that in the interest of justice, the assessee should be given one last opportunity to substantiate its case since the learned CIT (A) has decided the issue ex-parte due to non-appearance of the Counsel. She submitted that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the Assessing Officer or the learned CIT (A) as the case may be by explaining the nature and source of the credits in the Bank Account and the source of introduction of capital by the Partners.

7. The learned DR, on the other hand, strongly opposed the arguments advanced by the learned Counsel for the assessee. Referring to the order of the learned CIT (A), he submitted that the learned CIT (A) has given as many as 8 opportunities and the assessee was not interested in prosecuting the appeal for which the learned CIT (A) has no other option but to decide the appeal on the basis of material available on record. He accordingly submitted that the order of the learned CIT (A) should be upheld and the grounds raised by the assessee should be dismissed.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO 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 by both sides. We find the AO in the instant case in the order passed u/s 143(3) r.w.s. 153C completed the assessment determining the income of

the assessee at Rs.36,11,000/- wherein he made addition of Rs.36,11,000/- being unsubstantiated credit in the Bank account maintained with Tamil Nadu Mercantile Bank and Rs.1.00 lakhs being introduction of capital by the Partner which remained unexplained. We find the learned CIT (A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that the additions are not based on any incriminating material found belonging to the assessee and therefore, the same cannot be sustained. Further, it is also her submission that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the Assessing Officer regarding the nature and source of the credits appearing in the Bank Account maintained with the Tamil Nadu Mercantile Bank and the source of introduction of capital by the Partners. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one last opportunity to the assessee to substantiate its case by filing the requisite details and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer and file the requisite details for early completion of the assessment without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

ITA No.226/Hyd/2016- A.Y 2008-09

9. The grounds raised by the assessee read as under:
1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.
 2. The learned Commissioner of Income-Tax (Appeals) erred in deciding the appeal without providing sufficient opportunity. The learned Commissioner of Income-Tax (Appeals) ought to have appreciated the circumstances under the which the appellant had to seek adjournment.
 3. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in initiating proceedings u/s 153C of the I.T.Act.
 4. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in holding that the amount of Rs.1,84,21,500/- was invested in Kartikeya Commercial Complex, Hyderabad and further erred in confirming the addition made by the Assessing Officer of Rs.1,84,21,500/-.
 5. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in rejecting the confirmations from the creditors.
 6. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in holding that the deposits made with HDFC Bank were not properly explained and further erred in confirming the action of the Assessing Officer in treating the amount of Rs.5 lakhs as income of the appellant by applying the provisions of Sec.69 of the I.T. Act.

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7. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing loss claimed in the return of income of Rs.17,526/-.
8. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in treating the sundry creditors of Rs.10,000/- as income of the appellant.
9. The Assessing Officer erred in confirming the action of the Assessing officer in levying interest u/s 234A and u/s 234B of the I.T. Act.
10. Any other ground that may be urged at the time of hearing.

10. After hearing both sides, we find the grounds raised by the assessee are identical to the grounds of appeal in ITA No.225/Hyd/2016. We have already decided the issue and the matter has been restored to the file of the Assessing Officer for fresh adjudication. Following similar reasonings, the grounds raised by the assessee are allowed for statistical purposes.

11. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court at the time of hearing itself i.e. on 11th October, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 11th October, 2023.

Vinodan/sps

Copy to:

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3	Pr. CIT-7, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order