

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

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं/ITA No. 1731/Hyd/2018
(निर्धारण वर्ष/Assessment Year: 2012-13)

Sai Siddartha Reddy
Engineers and Contractors
Pvt. Ltd.,
Hyderabad
[PAN : AAKCS0556Q]

Vs. Income Tax Officer,
Ward-3(1),
Hyderabad

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती द्वारा/Assessee by: NONE

राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 20/12/2023

घोषणा की तारीख/Pronouncement on: 29/12/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M. :

This appeal filed by the assessee is directed against the *ex parte* order dated 01-02-2017 of the Learned Commissioner of Income Tax (Appeals)-3, Hyderabad [Learned CIT(A)] relating to Assessment Year 2012-13.

2. None appeared on behalf of the assessee despite service of notice through RPAD. It was seen from the record that this appeal was earlier represented by one Mr. P. Murali Mohan Rao, C.A. However, on 1st November, 2023, he withdrew his Power of Attorney (POA) for which fresh notice of hearing through RPAD was issued and served on the assessee and the acknowledgement is placed on record. However, none appeared on behalf of the assessee at the time of hearing, nor any adjournment application was filed. It was further seen that the assessee was not appearing before the learned CIT(A), despite number of opportunities granted for which the learned CIT(A) also has passed the *ex parte* order. Under these circumstances, we proceed to decide the appeal on the basis of material available on record and after hearing the learned DR.

3. At the outset, it was noticed that there was a delay of 508 days in filing the appeal by the assessee for which a condonation petition has been filed by the assessee, explaining the reasons for such delay which is due to continuous medical treatment of Mr. T. Prakash Reddy, Managing Director, who was looking after the business and due to the division of the State, the work of the assessee was shifted to Anantapur (AP) and the order of the learned CIT(A) did not reach the M.D. or the assessee. However, the contents of the condonation petition do not inspire confidence in absence of any supporting material and is, therefore, liable to be rejected. However, we proceed to decide the appeal on merits also on the basis of material available on record and after hearing the learned DR.

4. Facts of the case, in brief, are that the assessee company is engaged in the business of civil construction. It filed its return of income on 09-10-2012 declaring total income of Rs. 59,91,080/-. The Assessing Officer, during the course of assessment proceedings, noted that there is an increase in share application money introduced by the assessee in the

form of cash and the assessee failed to give satisfactory explanation. The Assessing Officer, therefore, made an addition of Rs. 6.96 crores towards un-explained share capital, by giving the following reasons:

“(a) The share application money pending for allotment as on 31.3.2011 was Rs.1,56,45,881/- and the share application money pending for allotment as on 31.3.2012 was Rs. 8,50,09,880/-. The company was formed in the year 2006 with an authorized share capital of Rs.5 crores only. The company had not filed any application to increase its authorized share capital with ROC, therefore the company collected more than its authorized capital from 464 members ..

(b) As per the company act 1956 the minimum shareholders to start a company are two and maximum shareholders can be 200, whereas the company collected share application money from 464 persons.

(c) The company has not submitted any documentary evidence in support of share allotment and conversion of share application money into share capital. Further the share application money was used for the purpose of business without actually allotting shares to the investors.

(d) As and when the company required the funds, share application money was introduced in the form of cash.

(e) The assessee failed to produce funds flow statement With respect to credits reflected in books.

(f) The AR submitted confirmation ,letters In stereotyped format. 99% of them do not have PAN, all of them are agriculturalists, related to the directors, have not produced any evidence in support of having agricultural. land, the assessee did not produce the investors for cross-examination , have hot produced Aadhar / Ration card in support of their identity, therefore the entire amount of share capital introduced during the year of Rs.6.96 crores is treated as unexplained investment u/s 68 of IT Act, 1961.

(g) The confirmation letters submitted by assessee are not reliable as all of them are in a standard format, the mode of payment either by Cheque/DD/Cash is not mentioned. Many of them claimed that

they have owned 5 acres of land, confirmation letters were signed by one or 2 individuals in different names, they were prepared at the office of the company, survey nos of agricultural lands were not mentioned properly.”

5. The Assessing Officer, similarly made addition of Rs. 25 lakhs on estimate basis out of the various expenses debited to profit and loss account on the ground that some of the bills/vouchers are self-made in nature and are not verifiable. The Assessing Officer, accordingly determined the total income at Rs. 7,83,91,080/-.

6. Since the assessee did not appear before the learned CIT(A) despite number of opportunities granted, learned CIT(A) dismissed the appeal filed by the assessee by observing as under:

“5. During the course of appeal proceeding the appellant did not make any written submissions despite repeated opportunities. Therefore assessment record is perused and appeal is decided as under.

There was increase in the share capital of f6.96 crores during the year. This amount was claimed to have been contributed by individuals, all of them are agriculturalists and the entire amount was contributed in the form of cash. 99% of them do not have PANs and all of them are from Ananthapur District of Andhra Pradesh. Few of them produced copies of pattedar pass books. During the assessment proceedings the Assessing Officer specifically asked for copies of Aadhar Card or Ration Card to prove the identity of share applicants. However the same was not produced. All the share applicants are farmers / relatives of directors. During the course of scrutiny proceedings the assessee in his letter dated 30.3.2015 had stated that the application money would be converted into share capital before 30.6.2015, meaning thereby that even after 3 years after collecting the amounts, shares were not allotted. During the course of appeal proceedings, the appellant was asked to give details of shares allotted, alternatively he was asked to give details of return/refund of share application money. Such details were to be submitted by appellant on or before 12.9.2016. But so far no details were submitted despite repeated opportunities. In these circumstances the identity of the share applicants are not proved as

the appellant neither 'produced the share applicants before Assessing Officer nor submitted the identity" proof in the form of Aadhar Card or Ration Card etc etc. The creditworthiness is also not proved as all of them are farmers, the amounts were claimed to have been invested in cash, there is no evidence that they own sufficient agricultural land to enable them to make huge investments. Therefore neither the identity nor the creditworthiness of share applicants is proved. Therefore the above addition made" by Assessing Officer towards unexplained share application money of Rs. 6.96 crores is confirmed."

7. 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)-3, is prejudicial to the interest of appellate is bad and erroneous in law.*
2. *The learned Commissioner of Income Tax (Appeals)-3, has erroneously confirmed the order of ITO, Ward-3(1) adding an amount of Rs. 6.96 crores of share application money collected during the year.*
3. *The learned Commissioner of Income Tax (Appeals)-3, has erroneously confirmed the order of ITO, Ward-3(1) adding an amount of Rs. 25 lakhs of work expenses/labour payments during the year.*
4. *The appellant hereby prays that the Honourable Tribunal may be pleased to modify the order of the Commissioner of Income Tax (Appeals)-3, Hyderabad.*
5. *The appellant prays for permission to file additional grounds and supporting documents at time of hearing."*

8. We have heard learned DR and perused the record. It is an admitted fact that due to non-substantiation by cogent evidence to the satisfaction of the Assessing Officer, the Assessing Officer made an addition of Rs. 6.96 crores on account of share application money and disallowed Rs. 25 lakhs out of various expenses debited to profit and loss

account on the ground that some of the vouchers are self-made and are not signed and, therefore, are not verifiable. We find that due to non-appearance of the assessee before the learned CIT(A), despite number of opportunities granted, the learned CIT(A) in the *ex parte* order passed by her sustained the additions made by the Assessing Officer. We do not find any infirmity in the order of the learned CIT(A) on this issue. As per the provisions of Section 68 of the Income tax Act, 1961 (“the Act”), the onus is always on the assessee to substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and creditworthiness of the share applicants and the genuineness of the transaction. In the instant case, the assessee could not substantiate with evidence to the satisfaction of the Assessing Officer regarding the ingredients of Section 68 of the Act, especially when 99% of the share applicants do not have PAN and assessee could not produce the investors before the Assessing Officer for his examination. Their identity also remained un-proved since the assessee could not file even adhar card or ration card. Further, the mode of payment also has not been categorically given as to whether the same is in the shape of cash, cheque or Demand Draft. Since the learned CIT(A) after perusal of the assessment order, has given justifiable reasons for sustaining the addition, therefore, we do not find any infirmity in the order of the learned CIT(A) on this issue.

9. So far as the disallowance of Rs. 25 lakhs is concerned, we find that Assessing Officer made the addition only of labour charges on the ground that some of the bills/vouchers are unsigned and the bills/vouchers are self-made. We find that learned CIT(A) sustained the addition, the reasons of which are already reproduced in the preceding paragraphs. We do not find any infirmity in the order of learned CIT(A) on this issue. It is the settled proposition of law that for claiming any expenses as allowable, the onus is always on the assessee to substantiate with evidence to the satisfaction of the Assessing Officer. However, the Assessing Officer has given a finding that some of the bills/vouchers are self-made and are not

signed. Nothing was brought before the learned CIT(A) or before us on this issue so as to take a contrary view than the view taken by the Assessing Officer. Hence, the order of the learned CIT(A) on this issue is also upheld.

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on this the 29th day of December, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 29/12/2023

TNMM

Copy forwarded to:

1. Sai Siddartha Reddy Engineers and Contractors Private Limited, C/o. P. Srinivasan & Co., Chartered Accountants, 12-13-424, Street No. 1, Tarnaka, Secunderabad.
2. Income Tax Officer, Ward-3(1), Hyderabad.
3. The Pr.CIT-3, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD