

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

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

आ.अपी.सं / **ITA Nos.618 to 620/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2015-16 to 2017-18)

Andhra Pradesh Industrial Development Corporation Ltd Hyderabad PAN:AABCA7395Q	Vs.	Dy. C. I. T. Circle 1(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri A.V. Raghuram, Advocate	
राजस्व द्वारा/Revenue by::	Shri K. Madhusudan, CIT(DR)	
सुनवाई की तारीख/Date of hearing:	29/01/2024	
घोषणा की तारीख/Pronouncement:	31/01/2024	

ORDER

Per Bench:

These 3 appeals filed by the assessee are directed against the order dated 6.9.2023 of the learned CIT (A)-, NFAC Delhi relating to A.Ys. 2015-16 to 2017-18 respectively. Since common issues are involved in all these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. First, we take up ITA 618/Hyd/2023. The grounds raised by the assessee read as under:

1. On the facts and in the circumstances of the case, the order passed by the Ld.CIT(A) is perverse and illegal.
2. The Ld.CIT(A) erred in sustaining the addition of Rs.6,33,57,106 made by the AO as income from other sources u/s.56 of the Act in spite of the fact that the Appellant had filed audited books of accounts by an Independent Auditor, computation of income under various heads and copy of Form 26AS indicating TDS credit available which was not considered by the AO. The ld. CIT(A) ought to have appreciated that the bifurcation of nature of income was very much available with the AO, and therefore assessing the income of Rs.6,33,57,106 under the head 'Income from other sources', and without granting eligible deductions, is incorrect.
3. The ld. CIT(A), considering the facts and circumstances of the case ought to have admitted the additional evidence in the form of audited financials, computation and Form 26AS and should have directed the ld. AO to consider the additions in the light of the evidences filed. The ld. CIT(A) ought to have appreciated that the Appellant had submitted before the ld. AO that the return could not be filed on account of disputes in revenue sharing of the Appellant corporation and the Telangana State Industrial Corporation pursuant to AP State Reorganization.
4. The authorities below failed to appreciate that the Appellant could not file return of income on account of pending decision on bifurcation of assets between the State of Andhra Pradesh and the State of Telangana. The ld. CIT(A) at any rate ought to have appreciated that non-filing of return would not entitle the Revenue to violate the provisions of Act and assess the income disregarding the heads of income as per the Act and without granting eligible deductions.

(Tax effect – Rs.2,05,56,215)

3. Facts of the case, in brief, are that the assessee did not file the return of income due to bifurcation Andhra Pradesh and Telangana for the impugned A.Y. which was beyond the control of the assessee company.

4. The learned AR drew our attention to the order passed by the learned CIT (A) NFAC whereby the contention of the learned AR is that the assessee had made a request for admitting additional evidences filed by the assessee in the form of copy of audited financial statement, computation of income and copy of Form 26AS. However, the learned CIT (A) NFAC dismissed the appeal of the assessee vide observation made in Para 7.1 which is to the following effect:

7.1 Ground of Appeal No. 1 (1 to 10 sub heads) pertaining to addition/assessment of Rs.6,33,57,106/- by the A.O. It is noticed that the Ld. A.O. has given Nemours opportunities to the appellant to file return of income u/s 147 and to reply the issues raised by him. From the order of the A.O. it appears that the appellant did not co-operate with the A.O. and only filed part replies which were not sufficient to allow the claims of the appellant. The Ld. A.O. assessed the income of the appellant on the basis of information available in the System mainly related to TDS. During the course of appellate proceeding the appellant has furnished computation of income and Audited Balance Sheet. But, these documents have no value when the return was not filed in the proper Form. In his so called computation of income the appellant declared his income at Rs.8,90,26,907/- as book profit. The appellant admitted non-filing of his ITR and requested for favourable view. I have gone through the order of the A.O. and the detail furnished by the appellant and found that reply of the appellant cannot be accepted as returned was not filed by him. Hence the assessment made by the A.O. is confirmed. However the A.O. is directed to give credit of the prepaid taxes.

5. It was the contention of the learned AR that the matter may kindly be remitted back to the file of the learned CIT (A) NFAC/Assessing Officer for passing a fresh order.

6. The learned DR had relied upon the order passed by the lower authorities.

7. We have heard the rival arguments made by both the sides, perused the orders of the lower authorities and the material available on record. We find as per the order of the Assessing Officer, the assessee being statutory organization have not filed the return of income for the A.Y 2015-16 on account of bifurcation of the State of Telangana and A.P. and the financials have not been separately prepared. It was submitted by the assessee before the Assessing Officer that the assessee had worked out the tax liability for the financial years 2015-16 to 2020-21 after considering the TDS and paid the advance taxes for each of the financial year. The learned Assessing Officer had rejected the contention of the assessee after relying upon the fact that it is the duty cast on the assessee to file the return of income u/s 139 of the Act and as the assessee failed to file the return of income, therefore, the Assessing Officer had no option but to estimate the income u/s 144 of the Act. In appeal, the learned CIT (A) NFAC had confirmed the order passed by the Assessing Officer as no return of income was filed by the assessee company. We have examined and considered the submissions made by the assessee. Undoubtedly, every person (including the assessee) whose income is more than the threshold fixed by the Act, is duty bound to file the return of income u/s 139(1) of the Act. Even in the case of the succession to the business other than death, the successor is also under an obligation to file the return of income as contemplated under section 170 of the I.T. Act r.w. other provisions of the Act. In the present case, the assessee chose not to file the return of income, on the basis of the financials available

with it, on the pretext that on account of bifurcation of the State, the financials of the two separate entities of the two States have not been finalized. In our view, the I.T. Act has not contemplated any such eventuality under the Act. The assessee is also a person within the meaning of the I.T. Act and was liable to file of the return of income as required u/s 139 r.w.s. 170 of the I.T. Act. Since the needful has not been done by the assessee, therefore, for the violation the Act, assessee had to face the consequences as contemplated under the I.T. Act.

8. Although the assessee in the appellate proceedings filed an application for admission of additional evidences under rule 46A of the Act, however, the learned CIT (A) NFAC brushed aside the documents filed by the assessee on the pretext that once the assessee has not filed the return of income, the documents cannot be considered. In our opinion, the documents are in the nature of the audit report, TDS certificate and other documents, which are contemporaneous documents and were required to be considered for the purpose of arriving at the net income of the assessee de hors the fact that the assessee has not filed the return of income. In the light of the above observations and finding, we deem it proper to remand the issue to the file of the learned CIT (A) NFAC to adjudicate the issue afresh considering the documents filed by the assessee during the appellate proceedings. Needless to mention that the assessee shall be given adequate opportunity of being heard. The learned CIT (A) NFAC shall adjudicate the issue afresh and pass a speaking order. We hold and direct accordingly.

9. In the result, appeal filed by the assessee in ITA No.618/Hyd/2023 for the A.Y 2015-16 is allowed for statistical purposes.

10. Since identical issues have been raised by the assessee in the remaining two appeals i.e. ITA Nos.619 & 620/Hyd/2023 for the A.Ys 2016-17 & 2017-18 respectively, following the reasonings given in para 8 of this order, these two appeals are also remanded back to the file of the learned CIT (A) NFAC for fresh adjudication with similar directions.

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

Order pronounced in the Open Court on 31st January, 2024.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 31st January, 2024

Vinodan/SPS

Copy to:

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1	A.P.I.D.C Ltd, 5-9-58, Parishram Bhavan, Basheer Bagh, Hyderabad
2	Dy.CIT, Circle 1(1) IT Towers, AC Guards, Masab Tank, Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order