

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

BEFORE

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

ITA Nos.593 & 597/Hyd/2023		
Assessment Years: 2017-18 and 2018-19		
Satya Venkata Chaitanya Mandala, R/o.49-37-10, Honey Mansions, Marredpalle, Nehrunagar, S.O. Hyderabad. Telangana - 500026. PAN : AFRPM1804Q.	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri K.C Devdas, C.A.	
Revenue by:	Shri Shakeer Ahamed, Sr. A.R.	
Date of hearing:	27.02.2024	
Date of pronouncement:	28.02.2024	

ORDER

PER LALIET KUMAR, J.M.

The appeals of the assessee for A.Y. 2017-18 and 2018-19 arises from the common order of Commissioner of Income Tax (Appeals) – 11, dt.18.08.2023 invoking proceedings under section 153A of the Income Tax Act, 1961 (in short, “the Act”), respectively. Facts and the grounds of appeal involved in both the appeals are identical except the amounts involved. We, therefore, deem it just

and convenient to dispose of these appeals by way of this common order, taking the appeal in ITA No.593/Hyd/2023 as a lead case.

2. The grounds raised by the assessee in ITA No.593/Hyd/2023 for A.Y. 2017-18 read as under :

“1. *The order of the Hon’ble CIT(A) is erroneous in law as well as facts of the case.*

2. *The Hon’ble CIT(A) has dismissed the appeal without appreciating the facts and circumstances of the case.*

3. *The Hon’ble CIT(A) has dismissed the appeal without giving an proper opportunity of being heard and the order passed without being heard is not valid.*

4. *The Hon’ble CIT(A) ought to have observed that the Assessing officer has failed to appreciate the detailed submission made during the course of assessment proceedings and has erred in treating the commission earned by the Assessee against bogus contracts, without having any relied material on hand is invalid.*

5. *The Hon’ble CIT(A) or the Assessing Officer has wrongly assessed the commission income in the hands of the Assessee which is not sustainable and the same need to be deleted.”*

2.1 The appeals filed by the assessee are barred by limitation by 46 days. He has moved a condonation application explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we allow the application for condonation of delay. Accordingly, the delay is condoned and the appeals of the assessee are admitted for hearing.

3. The brief facts of the case are that assessee, who is an individual, is engaged in the business of executing sub contract works. The assessee originally filed his return of income for A.Y.

2017-18 on 30.03.2018 admitting total income of Rs.19,37,600/-. A search & seizure operation u/s. 132 of IT Act was conducted in the case of M/s. Axis Energy Venture India Pvt Ltd on 10.12.2020. As part of search operation, warrant u/s 132 was executed on the assessee. Subsequently, the case was centralized to the Central Circle-1(1), Hyderabad on 23.06.2021. Notice u/s 153A was issued on 22.07.2021. In response to the notice the assessee filed return of income on 08.03.2022 admitting total income of Rs. 20,87,603/-. Notice u/s. 143(2) was issued on 14.03.2022 and notices u/s. 142(1) was issued.

3.1 During the course of assessment proceedings, the assessee has submitted that he has executed the sub contract works during the current year and earlier years and that he has not received any commission on execution of the sub contract works, he has received the contract works from the Axis Energy Group and other parties and executed the same. It was also submitted that the contract works were executed for the business and not for the purpose of commission, however the Assessing Officer has not considered the explanation of the assessee and made the addition on account of commission income assuming that the assessee executed bogus contracts project. Thus, AO has completed the assessment by making the addition of Rs.18,02,788/- and thereby assessed the total income at Rs. 38,90,391/- and accordingly passed assessment order u/s 153A of the Act.

4. Feeling aggrieved with the assessment order, assessee filed the captioned appeals before the Ld.CIT(A) who dismissed the appeals on account of non-prosecution and on merits.

5. Before us, ld.AR submitted that the assessee has failed to provide necessary information and appear before the lower authorities. Hence, the ld. AR requested the Bench to remand the matter back to the file of Assessing Officer. Ld.AR further submitted that as the assessee has sufficient cause from putting in appearance before the lower authorities, matter may kindly be remitted back to the authorities below for afresh adjudication.

6. Per contra, the ld.DR has not raised any objection for remanding the matter back to the file of lower authorities.

7 We have heard the rival contentions of both the parties and perused the material available on record and also the orders passed by the lower authorities. On perusal of the impugned order passed by ld.CIT(A), we found that ld.CIT(A) passed order confirming the action of the Assessing Officer in his assessment framed on 25.03.2022. The merits of the assessee's appeal before the ld.CIT(A) have neither been discussed nor decided by the ld.CIT(A). From para 6 of the order of ld.CIT(A), it is clear that ld.CIT(A) was forced to decide the appeal on the basis of material available on record, as there was no representation on behalf of the assessee even after granting several opportunities. In view of the above reasons, in our view, the ends of justice will be met if the matter is remanded back to the file of Assessing Officer with a direction to decide the issue after considering the documents available on record and affording the opportunities of hearing to the assessee in accordance with law subject to payment of costs of Rs.5,000/- (Rupees Five Thousand

only) each in favour of Prime Minister National Relief Fund which shall be payable within one month or from the date of receipt of this order or whichever is earlier.

8. The assessee shall be at liberty to file documents, if any, as required for proving his case and the Assessing Officer shall consider the evidences, if any, filed by the assessee. Needless to say the Assessing Officer shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Assessing Officer shall pass a detailed speaking order dealing with the contentions of the assessee. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Assessing Officer for fresh adjudication. Thus, the grounds of the assessee are allowed for statistical purposes.

9. In the result, the appeal of the assessee for A.Y. 2017-18 is treated as allowed for statistical purposes.

10. Now coming to assessee's appeal for A.Y. 2018-19, which is identical to the facts and issues raised in ITA 593/Hyd/2023 for A.Y. 2017-18, our decision in ITA No.593/Hyd/2023 would apply mutatis mutandis. Accordingly, the appeal of the assessee for A.Y. 2018-19 is also allowed for statistical purposes.

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

Order pronounced in the Open Court on 28th February, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 28th February, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Satya Venkata Chaitanya Mandala,R/o.49-37-10, Honey Mansions, Marredpalle, Nehrunagar, S.O. Telangana - 500026.
2	The Deputy Commissioner of Income Tax, Central Circle – 1(1), Hyderabad.
3	PCIT, (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order