

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

ITA Nos.1008 & 1009/Hyd/2016 & C.O 60/Hyd/2015		
Assessment Years: 2009-10, 2010-11 and 2011-12		
AKR Constructions Ltd Hyderabad PAN:AAFCA0649H (Appellant)	Vs.	Dy. C.I.T Central Circle - 1 Hyderabad (Respondent)
Assessee by:	Advocate Almos Mohamed	
Revenue by:	Smt. Haritha, CIT (DR)	
Date of hearing:	19/03/2024	
Date of pronouncement:	25/03/2024	

ORDER

Per R.K. Panda, Vice-President

ITA No.1008/Hyd/2016 filed by the assessee is directed against the order dated 12.02.2016 of the learned CIT (A)-11, Hyderabad relating to A.Y.2009-10. ITA No.1009/Hyd/2016 is directed against the order dated 24.2.2016 of the learned CIT(A)-11, Hyderabad relating to A.Y 2010-11. The C.O No.60/Hyd/2015 filed by the assessee is directed against the appeal filed by the Revenue vide ITA No.784/Hyd/2015 for the A.Y 2011-12. For the sake of convenience, these two appeals and the C.O were heard together and are being disposed of by this common order.

2. This is the 2nd round of litigation before the Tribunal. The above two appeals as well as the C.O were earlier dismissed

by the Tribunal vide order dated 30.01.2023. Subsequently, vide M.A Nos. 14, 15 & 16/Hyd/2023, order dated 23.02.2024, the Tribunal recalled its earlier order. Hence these are recalled matters.

ITA 1008/Hyd/2016 – A.Y 2009-10

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of civil contract and one of the sub-contractors of M/s NCC Ltd. It filed its original return of income on 24.7.2010 admitting income of Rs.11,50,33,760/-. The return was processed u/s 143(1) of the I.T. Act. A search & seizure operation u/s 132 of the I.T. Act was conducted in the NCC group of cases and a survey operation was conducted at the office premises of the assessee company on 6.10.2020. During the course of survey u/s 133A, incriminating material was found and impounded. During the search and seizure operation, material was seized from the residence of Mr. A. Krishna Reddy out of which page Nos. 124 & 125 of the annexure AKR/R/PO/01 was found to be belonging to the assessee. Similarly, page 71 & 92 of the said annexure were also found to be belonging to the assessee company. Accordingly, the Assessing Officer issued notices u/s 153C of the I.T. Act to the assessee for the A.Y 2005-06 to 2010-11 on 5.8.2011 which was duly served on the assessee. In response to the same, the assessee filed return of income on 13.09.2012 admitting total income of Rs.11,50,33,760/-. The Assessing Officer completed the assessment determining the total income of the assessee at Rs.18,13,68,464/- by making the following additions:

i) Unexplained expenditure	-	Rs. 34,97,000
ii) Recognized income	-	Rs. 91,83,544
iii) Unaccounted receipt (i)	-	Rs. 22,00,000

iv) Unaccounted receipt (ii)	-	Rs. 11,00,000
v) Disallowing interest	-	Rs. 17,87,483
vi) Undisclosed investment	-	Rs. 4,85,66,677

4. In appeal, the learned CIT (A) partly allowed the appeal filed by the assessee wherein he sustained the addition of Rs.34,97,000/- made by the Assessing Officer on account of unexplained expenditure and deleted the remaining additions.

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 Learned Commissioner of Income Tax (Appeals)-11, Hyderabad [CIT(A)] has erred on facts and in law.

2. Learned CIT(A) is not justified in sustaining the addition of Rs. 34,97,000/- on account of each payment towards labour charges at various sites of work executed by the assessee.

3. Learned CIT(A) is not justified in not accepting the explanation that the said amount is part of the amount Rs. 1,50,00,000/- admitted by the assessee consequent to survey operations on the assessee’s premises in March 2010.

4. In any case, as regards Rs. 10,00,000/- out of the above amount, Learned CIT(A) failed to notice that the entry of Rs. 10,00,000/- as cash payment, on 27.10.2008 is a mistaken entry at page 125 and the said amount was paid by way of cheque No. 836777 as could be seen from P 124 of the seized documents in the course of search operations at the residence of Sri. Alluru Krishna Reddy, Managing Director of the appellants company. .

5. For these any other grounds that may be raised at/before the date of hearing, it is prayed that the addition of Rs. 34,97,000/- be kindly deleted.”

6. The assessee has also raised the following additional grounds:

“1. Proceedings u/s. 153C are invalid in law. Satisfaction as required before initiating proceedings u/s . 53 C of the Income Tax Act, 1961 has not been recorded by the Assessing Officer in the course of proceedings in the case of the searched person, Sri A. Krishna Reddy. Board circular

no. 24/2015, dt.31.12.2015 is applicable to the facts of the case. Proceedings u/s. 153C are invalid in law.

2. A.O has erred in holding that the papers found during the course of search & seizure proceedings in the case of Sri A. Krishna Reddy, the searched person belong to the assessee. They only pertain to or contain the information about the assessee. Provisions of 153 C(1) before its amendments w.e.f. 01.06.2015 by way of substitution apply.

3. Authorized Representative (A.R) not pressing the grounds of appeal which were filed by the assessee is against law. Consent giving up jurisdictional grounds of appeal which go to the root of the matter is against law.

4. Learned CIT (A) is not justified in not disposing of the jurisdictional grounds raised by the assessee only because A.R did not press those grounds which is against law. Consent cannot confer jurisdiction.

5. Proceedings u/s. 153C are not legally valid also for the reason that a notice u/s. 153C has not been issued for the current assessment year. A single notice u/s. 153C for all the six preceding assessment years 2005-06 to 2010-11 is not valid in law.

6. Learned CIT(A) has erred in holding that Ground No. 1 is general in nature and thereby not considering it."

7. So far as the additional grounds are concerned, in absence of any explanation offered by the assessee towards the admissibility of the additional grounds, the same are dismissed. Therefore, the grounds that remain to be adjudicated are regarding the order of the learned CIT (A) in sustaining the addition of Rs.34,97,000/- made by the Assessing Officer.

7.1 Facts of the case in brief are that during the course of assessment proceedings, the Assessing Officer asked the assessee to explain the cash payment of Rs.34,97,000/- for the impugned A.Y 2009-10 and cheque payment of Rs.70,30,000/- which are appearing in the seized material found during the course of search. From the books of account and other details furnished by the assessee, the Assessing Officer noted that the cheque payments were duly reflected in the books of account whereas the

cash payment are not reflected. He, therefore, confronted the same to the assessee. Rejecting the various explanations given by the assessee and observing that the cash payments were not reflected in the books of account, the Assessing Officer made addition of Rs.34,97,000/- which has been upheld by the learned CIT (A).

8. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) on this issue and filed the following written submission:

1. This Hon'ble Tribunal was pleased to grant relief in five out of seven additions and part relief in another item of addition as detailed below:

<u>S.No</u>	<u>Description</u>	<u>Additions Rs</u>	<u>Status in CIT Appeal</u>
1	Un explained Expenditure	34,97,000	Relief not granted
2	Recognition of Income	91,83,544	Relief granted
3	Un accounted receipt	22,00,000	Relief granted
4	Un accounted receipt	11,00,000	Relief granted
5	Disallowing Interest	17,87,483	Relief granted
6	Un Disclosed Investment	4,85,66,677	Relief granted

2. The Appellant further submits that this Hon'ble Tribunal rejected various explanations given by the assessee, observing that it did not find any infirmity in the order of the learned CIT(A) while sustaining the above addition. ***Accordingly, the same is upheld and grounds raised by the assessee on this issue are dismissed.***

3. It is further submitted that the assessing officer treated the cash payments as made outside the books of accounts for Rs.34,97,000 as unexplained expenditure. The item has been added by the A.O as cash payments made to Labour contractor Mr. Y.Ramulu which was found from the seized material and the same is disallowed by CIT(A) also.
4. The Appellant submits that the above disallowance of Rs.34,97,000 comprises a payment of Rs.10,00,000 (Cash-in Statement 124 & 125) purely by way of cheque no. 836777 dated 27.10.08 drawn on Bank of Baroda, Masabtank Branch, Hyderabad which was encashed on the same date, that is, 27.10.2008. A copy of the bank statement for the relevant date showing debit entry by the bank is attached for ready information. In support of this, the Appellant attaches a copy of the bank statement for the relevant period and also the ledger extract of the bank's account in its books in **Annexure-1**.
5. The Appellant further submits that about 4 to 5 crores of rupees are distributed in the accounts payments and are recorded at the end of each month. The above payment is a clear case of 'accounted payment' only and cannot be termed as unaccounted and unexplained expenditure by the assessee. The Appellant therefore prays this Hon'ble Tribunal to allow the above expenditure of Rs.24,97,000 as it is a normal practice considering the nature of Business.
6. The Appellant prays this Hon'ble Tribunal to take a liberal view on this matter and order the expenditure as explained as the Appellant's nature of business is such that some of the expenditures could not be explained.

PRAYER:

The Appellant prays this Hon'ble Tribunal to provide relief to the Appellant Assessee on the following:

Assessment year	Amount disallowed	Amount claimed as relief
2009-10	Rs.34,97,000	Rs.34,97,000

9. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A).

10. We have heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We find the Assessing Officer in the instant case had made addition of cash payment of Rs.34,97,000/- and cheque payment of Rs. 70,30,000/- which were appearing in the seized material found

during the course of search. We find the learned CIT (A) deleted the cheque payment of Rs.70,30,000/- but sustained the addition of Rs.34,97,000/- for which the assessee is in appeal before the Tribunal. It is the submission of the learned Counsel for the assessee that out of the above amount of Rs.34,97,000/-, an amount of Rs.10,00,000/- has been paid by cheque vide cheque No.836777 dated 27.10.2008 drawn on Bank of Baroda, Masab Tank Branch, Hyderabad which was encashed on the same date, i.e. on 27.10.2008, the details are filed in the paper book. However, she could not explain the balance amount. Since out of the cash payment of Rs.34,97,000/-, the learned Counsel for the assessee could prove cash payment of Rs.10,00,000/- being out of withdrawal of equivalent amount from Bank on 27.10.2008, therefore, we direct the Assessing Officer to delete the amount. So far as the balance amount of Rs.24,97,000/- is concerned, in absence of any further material before us, we sustain the addition. The grounds raised by the assessee for the impugned A.Y are accordingly partly allowed for statistical purposes.

ITA No.1009/Hyd/2016 – A.Y 2010-11

11. Facts of the case, in brief, are that the assessee filed the return of income on 30.09.2011 admitting income of Rs.5,71,94,440/-. In response to notice u/s 153C of the Act, the assessee filed return on 13.09.2012 admitting the same income of Rs.5,71,94,440/-. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 153C determining the total income of the assessee at Rs.12,83,19,811/- wherein he made the following additions:

Description	Amount (Rs.)
Income returned	5,71,94,440
Add: Unaccounted receipt	23,08,280

Add: Unaccounted income	3,24,01,262
Add: Unexplained expenditure	70,000
Add: Income recognized	98,18,497
Add: Hire charges	49,00,000
Add: Hire charges	2,09,64,922
Add: Unexplained cash credit	6,62,410
Total assessed income	12,83,19,811

12. In appeal, the learned CIT (A) gave part relief to the assessee wherein he deleted the additions of Rs.23,08,280/- on account of unaccounted receipts, Rs.49,00,000/- on account of hire charges, Rs.2,09,64,922/- on account of hire charges, Rs.98,18,497/- being non recognition of income and Rs.6,62,410/- being unexplained cash credit. He however, confirmed the amount of Rs.70,000/- being unexplained expenditure and gave part relief out of Rs.3,24,01,262/- which was added by the Assessing Officer as unaccounted income.

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

“1. The Learned Commissioner of Income Tax (Appeals)-11, Hyderabad [CIT(A)] has erred on facts and in law.

2. Learned CIT(A) is not justified in sustaining the addition of Rs. 18,00,000/- in the case of Sri. R. Venugopala Reddy.

3. Learned CIT(A) is not justified in sustaining the addition of Rs. 3,72,726/- out of Rs. 6,47,726/-, although the remand report is silent on this amount.

4. Learned CIT(A) has unreasonably sustained the addition of Rs. 13,25,581/- subject to a relief of Rs. 4,000/- on account of totaling mistake.

5. Learned CIT(A) has erred in upholding an amount of Rs. 3,24,777/- out of Rs. 20,52,117/- in the case of Sri. Sudhakara Reddy, sub- contractor.

6. Learned CIT(A) is not justified in sustaining the additions of Rs. 26,49,111/- and Rs. 3,74,909/- totaling to Rs. 30,24,020/- in respect of Sri. Krishnam Naidu and Sri. Prahlad.

7. Having regard to the submissions of the assessee before the lower authorities, it is prayed that all the above additions sustained by the CIT(A) be kindly deleted."

13. The assessee has also raised the following additional grounds:

"1. Proceedings u/s. 153C are invalid in law. Satisfaction as required before initiating proceedings u/s 153 C of the Income Tax Act, 1961 has not been recorded by the Assessing Officer in the course of proceedings in the case of the searched person. Sri A. Krishna Reddy. Board circular no. 24/2015, dt.31.12.2015 is applicable to the facts of the case. Proceedings u/s. 153C are invalid in law.

2. A.O has erred in holding that the papers found during the course of search & seizure proceedings in the case of Sri A. Krishna Reddy, the searched person belong to the assessee. They only pertain to or contain the information about the assessee. Provisions of 153 C(1) before its amendments w.e.f. 01.06.2015 by way of substitution apply.

3. Authorized Representative (A. R) not pressing the grounds of appeal which were filed by the assessee is against law. Consent giving up jurisdictional grounds of appeal which go to the root of the matter is against law.

4. Learned CIT (A) is not justified in not disposing of the jurisdictional grounds raised by the assessee only because A.R did not press those grounds which is against law. Consent cannot confer jurisdiction.

5. Proceedings u/s. 53C are not legally valid also for the reason that a notice u/s. 153C has not been issued for the current assessment year. A single notice u/s 153C for all the six preceding assessment years 2005-06 to 2010-11 is not valid in law.

6. Learned CIT(A) has erred in holding that Ground No. 1 is general in nature and thereby not considering it".

13.1 The learned Counsel for the assessee did not press the additional grounds for which the learned DR has no objection. Accordingly, the additional grounds are dismissed.

14. So far as the other grounds are concerned, the learned Counsel for the assessee filed the following written submission:

ASSESSMENT YEAR 2010-11:

1. The Appellant submits that the Assessing Officer has disallowed an amount of Rs.3,24,01,262 as unaccounted income for the assessment year 2010-11 and the CIT (A) was pleased to give a relief of Rs.2,55,54,158. The amount of Rs.68,43,104 remained as an added Taxable Income amount and we herewith provide the proof of documents for Rs.22,14,233 as deductions made in their bills. The remaining amount of Rs.46,32,871 could not be explainable, we humble request to consider the same also as expenditure considering the nature of business of the assessee.

Sl. No.	Name of the Sub-Contractor	Nature of payment	Sl. No. in the Asst. Order	Total Addition (Rs.)	Page no
1	PV Krishnam Naidu	Recovery	12	26,49,111	4
2	Prahlad	Recovery	14	3,78,909	8
3	Venugopal Reddy	Recovery	16	18,00,000	13
4	Sevya Naik	Recovery	17	3,72,726	17
5	MokambikaConsts.	Recovery	18	13,21,581	23
6	Sudhakar Reddy	Recovery	20	3,24,777	26
			Total	68,47,104	

The above expenses are in the nature of recoveries only and therefore no way to be related as payments made to the parties. The copies of RA Bills and Ledger copies are enclosed in **Annexure-1. Page NO 3**

2. The Appellant submits that the above amounts do not represent 'unaccounted income' as alleged by the assessing officer, but are the cost of materials supplied by the Appellant to the respective contractors. As these amounts represent purely cost of materials and other consumables supplied to the contractors, these cannot be treated as unaccounted income by any stroke of imagination. The Appellant submits a copy of the recovery statement in support of its evidence that the value of materials debited to the contractors are not unaccounted income. It is irony to state that the assessment order of Dy. Commissioner clearly states that these amounts are for recovery. The Appellant therefore prays this Hon'ble Tribunal to favorably consider the same. The Appellant submits copies of ledger accounts of above parties in evidence of the same.

PRAYER:

The Appellant prays that this Hon'ble Tribunal to provide relief to the Appellant Assessee on the following:

Assessment year	Amount disallowed	Amount claimed as relief
2010-11	Rs.68,47,104	Rs.68,47,104

15. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A).

16. 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 find the

Assessing Officer in the instant case had made addition of Rs.7,11,25,371/- under various heads out of which the learned CIT (A) sustained the addition of Rs.68,43,104/-. It is the submission of the learned Counsel for the assessee that out of the same, an amount of Rs.22,14,233/- represents deductions from their bills and the balance amount of Rs.46,32,871/- could not be explainable. The learned Counsel for the assessee filed the following details:

Assessment Order F.Y 2010-11							
Sl.No	Name of the Subcontractor	Cash Paid	Recovery	Total	Relief as per Comm. Of IT Appeal Dated 24.02.2016	Matched Deductions as per ledger	Could not explainable
1	K.R.Ramesh	8,73,985.00	10,47,972.00	19,21,957.00	19,21,957.00		
2	K.R.Ramesh	10,00,000.00	-	10,00,000.00	10,00,000.00		
3	R Siddapa	5,00,000.00	10,70,416.00	15,70,416.00	15,70,416.00		
4	Srinivas Reddy	10,00,000.00	-	10,00,000.00	10,00,000.00		
5	K Venkat Subba Reddy	-	9,25,873.00	9,25,873.00	9,25,873.00		
6	KLR Construction	-	9,71,847.00	9,71,847.00	9,71,847.00		
7	KLR Construction	3,00,000.00	12,25,574.00	15,25,574.00	15,25,574.00		
8	Hari Krishna Reddy	-	21,89,850.00	21,89,850.00	21,89,850.00		
9	Aarkey Construction	-	80,372.00	80,372.00	80,372.00		
10	Subramanyam Traders	10,96,608.00	5,44,660.00	16,41,268.00	16,41,268.00		
11	Nagaraja Reddy	1,22,803.00	6,463.00	1,29,266.00	1,29,266.00		
12	PV Krishnam Naidu	-	26,49,111.00	26,49,111.00		16,09,765.00	10,39,346.00
13	Basavaraj Hiremath	15,00,000.00	16,19,277.00	31,19,277.00	31,19,277.00		
14	Prahalad	11,000.00	2,34,643.00	3,78,909.00	-	2,41,893.00	1,37,016.00
15	Pumpa Naik	4,33,468.00	1,54,914.00	5,88,382.00	5,88,382.00		
16	Venugopal Reddy	18,00,000.00	30,75,420.00	48,75,420.00	30,75,420.00	-	18,00,000.00
17	Sevya Naik	2,75,000.00	3,72,726.00	6,47,726.00	2,75,000.00	3,11,000.00	61,726.00
18	Mokamibika Construction	11,00,000.00	2,21,581.00	13,21,581.00			13,21,581.00
19	Suresh	50,000.00	-	50,000.00	50,000.00		
20	Sudhakar Reddy	8,63,670.00	11,88,447.00	20,52,117.00	17,27,340.00	51,575.00	2,73,202.00
21	Hanumanth Appa	5,00,000.00	5,62,316.00	10,62,316.00	10,62,316.00		
22	Sambasiva Rao	27,00,000.00	-	27,00,000.00	27,00,000.00		
	Grand Total	1,41,26,534.00	1,81,41,462.00	3,24,01,262.00	2,55,54,158.00	22,14,233.00	46,32,871.00

17. The learned Counsel has also filed the relevant details to explain the material deduction of Rs.22,14,233/-. In view of the details submitted before us now we direct the Assessing Officer to delete the amount of Rs.22,14,233/- and the balance amount is sustained. The grounds raised by the assessee are partly allowed.

C.O. No.,60/Hyd/2015 – A.Y 2011-12

18. The learned Counsel for the assessee at the outset did not press C.O filed by the assessee. The learned DR has no objection. Accordingly, the C.O. No. 60/Hyd/2015 – A.Y 2011-12 filed by the assessee is dismissed as withdrawn.

19. In the result, two appeals i.e. ITA No.1008/Hyd/2016 & 1009/Hyd/2016 for the A.Ys 2009-10 & 2010-11 respectively are partly allowed and the C.O filed by the assessee is dismissed as withdrawn.

Order pronounced in the Open Court on 25th March, 2024.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 25th March, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	M/s. AKR Constructions Ltd, Plot No.8-2-684/J4, Kanaka Durga Temple Lane, Road No.12, Banjara Hills, Hyderabad 500034
2	Dy. CIT, Central Circle-1, Posnett Bhavan, Basheerbagh, Hyderabad
3	Pr. CIT-Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order