

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

Appeal in No.	Assessee	Respondent	A.Y
353/Hyd/2023	Heera Gold Exim Ltd Kukatpally, Hyderabad PAN:AACCH5458A	Dy.CIT, Circle 2(2) Hyderabad	2015-16
354/Hyd/2023	-do-	-do-	2016-17
355/Hyd/2023	-do-	-do-	2017-18
411/Hyd/2023	Heera Retail (Hyderabad) Private Ltd, Hyderabad PAN:AACCH5740D	-do-	2015-16
412/Hyd/2023	-do-	-do-	2016-17
413/Hyd/2023	-do-	-do-	2017-18

निर्धारिती द्वारा/Assessee by:	Shri Mohd.Afzal, Advocate
राजस्व द्वारा/Revenue by::	Shri Sessa Srinivas,CIT(DR)
सुनवाई की तारीख/Date of hearing:	06/03/2024
घोषणा की तारीख/Pronouncement:	30/04/2024

आदेश/ORDER

Per Bench:

The above batch of six appeals (ITA Nos.353 to 355/Hyd/2023 filed by Heera Gold Exim Ltd and ITA Nos.411 to 413/Hyd/2023 filed by Heera Retail (Hyderabad) Pvt Ltd) are directed against the separate orders dated 27.04.2023 of the learned CIT (A)-11, Hyderabad relating to A.Ys. 2015-16 to 2017-18 respectively. Since identical grounds have been taken in all these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.353/Hyd/2023 – A.Y 2015-16 (Heera Gold Exim Ltd)

2. Facts of the case, in brief, are that the assessee is a limited company trading in gold and filed its return of income on 22.09.2015 for the impugned assessment year declaring total income of Rs.9,16,24,940/-. The return was processed u/s 143(1) on 07.10.2015. A survey operation u/s 133A of the I.T. Act was conducted on the assessee and its group companies on 2.3.2017 wherein certain incriminating material was found which was impounded during the survey proceedings. The assessee company had admitted additional incomes in the group companies during the course of survey proceedings and paid taxes, the details of which are as under:

Sl no	Name of the Company	AY	Incomes admitted in Survey	Taxes paid after the Survey
1	M/s.Heera Gold Exim Ltd	2015-16	Rs.2,10,75,360	Rs. 68,40,000
		2016-17	Rs.20,32,27,630	Rs. 6,97,10,000
		2017-18	Rs.36,43,63,750	Rs.10,98,96,000
2	M/s.Heera Retail (Hyd) Pvt Ltd	2015-16	Rs. 14,12,520	Rs. NIL
		2016-17	Rs. 5,64,82,547	Rs. NIL
		2017-18	Rs.18,96,00,000	Rs.6,30,00,000
3	M/s.Heera Foodex Pvt Ltd	2017-18	Rs.4,80,00,000	Rs.2,22,00,000

3. Consequently, the case was converted into scrutiny after obtaining approval from the competent authority. A notice u/s 148 was issued to the assessee company on 27.03.2018. In response to the said notice, the assessee filed its return of income on 6.4.2018 declaring total income of Rs.11,27,00,300/- by including the survey declaration in the return of income. The Assessing Officer thereafter, issued statutory notices u/s 143(2) and 142(1) of the Act along with a

questionnaire to which the AR of the assessee appeared before the Assessing Officer and furnished some details.

4. The Assessing Officer noted that during the course of survey proceedings, it was found that the scale of jewellery business claimed to have been carried out by the assessee in the financials does not match with the scale of receipts of amount appearing in the bank accounts. Although there were certain vouchers/notings found during the course of survey which were impounded, however, the same were not supported by proper bills. No stock register of any kind was found during the survey. Therefore, the assessee was asked to furnish the books of account, on the basis of which the audited financials were prepared. However, the assessee did not furnish any books of account. The Assessing Officer therefore, proceeded to analyse the bank accounts of the assessee company and noted that the amounts are being received from a large number of persons by way of account transfer. The money received from the transactions are through cheques/RTGS/NEFT with sporadic cash deposits. When questioned about the persons who transferred the money to the company, the M.D has answered that the amounts are received on account of sale of gold and the unit purchase receipts were issued on sale of gold.

5. Since no purchase/sales bills were found during the course of survey the auditor of the company was examined. The auditor, who audited the books of account in his sworn statement recorded u/s 131 replied that he was provided with computerized excel data and soft copy of bank statements and

computer-generated sale vouchers. The Assessing Officer noted that nothing was provided to him despite number of opportunities. He, therefore, analyzed the reply of the statutory auditor which has been reproduced at page 4 to 6 of the assessment order. The Assessing Officer further noted that during the course of survey proceedings, the statement of Ms. Nowhera Shaik, Director of the Company, on oath was recorded. However, the assessee never produced the audited books of account, purchase and sale vouchers/bills. Since there was no cooperation from the assessee and because of the complexity of the accounts, the Assessing Officer referred the matter to the PCIT Hyderabad for appointing Special Auditor u/s 142(2A) of the I.T. Act. The Special Auditor so appointed gave his report. After considering the report of the Special Auditor, the Assessing Officer completed the assessment determining the total income of the assessee at Rs.442,22,18,517/- by recording as under:

31. To sum up, the bank account credits though claimed by the assessee as sale of gold, are deposits collected from various customers across different States. The debits appearing in the bank accounts are primarily payment of portion of the deposits collected, i.e., around 3% to 3.8% of the deposits. Even these deposits collected are not appearing in the books of account as such and no outstanding balances were reflected in the Balance Sheet. Non-admission of the overall credits in the profit & loss account and the outstanding balances in the Balance Sheet against the depositors in the books of account give credence to the recent findings of the other Investigating Agencies that after collecting the deposits, the assessee had diverted such funds for procuring assets in the names of various persons of the group. Therefore, since major

Portion of the debits pertain to payment of interest to the deposits and for acquiring assets outside the books in the names of group members and the liability towards the credits was not admitted in the books, the entire credits appearing in the bank account were taken as unexplained credits. After arriving at the conclusion that the bank accounts are unexplained credits of the assessee, a fine bifurcation of the credits so admitted in the profit & loss account and the credits appearing in the bank account is made. Against the credits appearing in the bank accounts, after inter-group deposits, at Rs.442,22,18,517/-, the assessee admitted Rs. Rs.224,96,73,175/- in the profit & loss account. As mentioned earlier, irrespective of the corresponding debits in respect of these credits, the amount of Rs.224,96,73,175/- is treated as unexplained credits u/s. 68 of the IT Act. Since the balance amount of Rs.217,25,45,342/- is not admitted by the assessee in its books of account, the same is treated as undisclosed receipt and added as income of the assessee along with addition made u/s 68 as above. As the entire receipts / deposits are treated as income of the assessee as above, no credence to the income admitted by the assessee in the return of income filed or revised income admitted consequent to survey is given. With this, the total income of the assessee determined comes to Rs.442,22,18,517/-.

6. The assessee filed appeal before the learned CIT (A) with a delay. So far as the reasons for delay is concerned, the assessee filed the following written submission:

"The appellant was faced with legal hurdles and as a result the the principal director of the appellant was in judicial custody from 14th October, 2018 to 19th January, 2021. Due to the resulting unfortunate turn of events most of the employees of the appellant has disbanded and therefore there were no responsible employees to receive and act upon the Income Tax notices. Subsequently, the appellant had faced trouble in accessing the e-filing portal as the passwords were lost and moreover the ongoing pandemic and e-filing portal issues further complicated the issue. We were informed regarding the said assessment order only on 02nd December, 2021 when we were called to the Income Tax office, consequently we requested for copies of documents including inter alia the assessment order, which were provided to us on 3rd December, 2021. After perusing the assessment order, we had requested the department for copy of the special audit report on which the assessment was based upon. We were provided with copies of the special audit report on 13th December, 2021. Also, the Honourable Supreme Court had in its order MA No 665 of 2021 dated 23/09/2021, directed that the period from 15.03.2020 to 02.10.2021 shall stand excluded for computation of period of limitation for any appeal, etc.

Considering the above said predicament of the appellant and the Honourable Supreme Court decision, the appellant craves leave of this Honourable authority to condone the delay in filing of appeal."

7. So far as the merit of the case is concerned, the assessee filed detailed written submission before the learned

CIT (A). It was argued that the order was passed against the principles of natural justice and the assessee was not provided with fair hearing. It was argued that the Director of the company was in judicial custody and therefore, could not furnish the required details to the Assessing Officer as well as to the Special Auditor. It was also argued that the CCS (Central Crime Station), Hyderabad had seized various documents and server for which the required information could not be furnished before the Assessing Officer. However, the learned CIT (A) although condoned the delay, but was not satisfied with the arguments advanced by the assessee and upheld the addition made by the Assessing Officer.

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

i) The order of the learned Commissioner of Income Tax (A) is against the law, weight of evidence and probabilities of case.

2. The learned Commissioner erred in confirming the order of the Assessing Officer wherein, the total income is determined at Rs.442,22, 18,517/- ignoring the facts and circumstances of the case.

3. The learned Commissioner erred in confirming the order of the Assessing Officer, wherein, the addition is made u/s 68 to determine the total income at Rs.442,22,18,517/- merely by accepting the suggestion of the Special Auditor, without application of mind.

4. The learned Commissioner ought to have appreciated that even assuming that (but not accepting) that the presentation the financials and business transactions are not presented properly, still the income is to be determined by the Assessing Officer as per the provisions of the IT Act. The genuine receipts/investments from the various persons cannot be the income of the assessee in the facts and circumstances of the case. Therefore, the CIT erred in confirming the order of the Assessing Officer who has

treated the receipts/investments from the customers/ investors at Rs,442,22,18,517/- as deemed income.

5. The learned Commissioner erred in stating that there is no response during Special Audit and assesment proceedings, without appreciating the fact that the MD/CFO of the company was in judicial custody from 14.10.2018 to 19.01.2021, whereas, the Auditor was Special was appointed on 14.12.2018. Therefore, the learned CIT ought to have sought a remand report from the Assessing Officer/Special Auditor, with a direction to accord an opportunity to present the case of the company with appropriate evidence in support of claims made in the financials.

6. The learned Commissioner ought to have that the Hon'ble Supreme Court during the course of hearing criminal appeals in Appeal No.761-762 of 2021 in the assessee's own case on 24.03.2022, observed that the proceedings completed at the back of the assessee are invariably to be set aside, therefore, the learned CIT ought to have accorded an opportunity to the assessee by calling for a remand report from the Assessing Officer with a direction to examine the issue afresh. Therefore, the CIT creed in confirming the order of the Assessing Officer, wherein, income is determined at Rs.442,22,18,517/-.

7. Without prejudice to the above grounds the learned CIT himself states that the transactions can be closely linked to the schemes run by the Appellant, therefore, erred in not deleting the addition made u/s 68/69A of the 1T Act.

8. The learned Commissioner erred in not appreciating 147,02,79,452/ the fact that, in view of the observations made by the Special Auditor/Assessing Officer, the provisions of section 68/69A of the 1T Act arc not attracted, in the case of assessee, therefore, erred in not deleting the addition of Rs.442,22,18,517/-.

9. The learned Commissioner observed that the Assessing Officer concluded that the Appellant has not been involved in gold trading business as claimed, the Appellant is accepting the deposits from the public and paying them a part of the same as interest every month, though this contention is not acceptable. Therefore, the learned CIT erred in confirming the order of the Assessing Officer wherein, the entire credits in the Bank are treated as unexplained credit to consider the same as deemed income u/s 68/69A of the 1T Act amounting to Rs.442,22,18,517/ -.

10. *The learned Commissioner ought to have appreciated that the Hon'ble Supreme Court in the criminal proceedings in appeal Nos. 761-761/2021 dated 12.05.2022 in assessee's own case, observed as *focus should be to verify the claims, verify assets and see how well the disbursement to the investors takes place, so that the issue of investors getting back their funds is met with as a priority". Therefore, the learned CIT erred in confirming the order of the Assessing Officer, wherein, the receipts from the investors are treated as deemed income u/s 68/69A, ignoring the fact that the investors are genuine.*

11. *The learned Commissioner ought to have appreciated that the Special Auditor and the Assessing Officer never doubted the genuineness the investors/customers who have purchased the units but the entire credits from the investors considered as deemed income u/s 68/69A of the I.T Act. Therefore, the learned CIT erred in confirming the order of the AO, wherein, the income is determined at Rs.442,22, 18,517/- which is against the facts and circumstances of the case.*

12. *The learned Commissioner ought to have appreciated that the Assessing Officer summoned some of the investors/purchasers and recorded their statements, wherein, all of them have confirmed their investments/purchase. Therefore, the CIT erred in confirming the additions made u/s 68/69A of the I.T. Act to determine the total income at Rs.442,22,18,517/-.*

13. *The learned Commissioner ought to have appreciated that in the earlier assessment years the Department accepted the financials and the nature of business of the assessee, therefore, the CIT erred in accepting the contention of the AO that there is no business activity and further treatment of entire credits in the Bank as deemed income to determine the total income at Rs.442,22, 18,517/-.*

14. *The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary."*

9. The learned Counsel for the assessee submitted that since the key persons of the company were under judicial custody and most of the books of account of assessee company

were seized by the Police Department, therefore, there was no proper representation before the Assessing Officer as well as before the learned CIT (A). He further submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case. He accordingly submitted that the matter should be set aside to the file of the Assessing Officer for adjudication of the issue afresh.

10. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A).

11. 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 determined the total income of the assessee at Rs. 442,22,18,517/- as against the returned income of Rs.11,27,00,300/-. We find the learned CIT (A) upheld the action of the Assessing Officer. It is the submission of the learned Counsel for the assessee that in the interest of justice, the assessee should be given an opportunity to represent its case properly before either of the lower authorities.

12. We find some merit in the above argument of the learned Counsel for the assessee. A perusal of the details furnished by the assessee shows that the M.D of the assessee company Ms. Nowhera Shaik was in judicial custody from 15.10.2018 to 19.01.2021. Further the (WCO)-A Division, Detective Department, Central Crimes Station Hyderabad City

had seized the books of account and documents on various dates. We find the Assessing Officer made the addition based on the Special Audit conducted by the Special Auditor appointed by them. We find the Auditor had issued notices to the M.D of the assessee company while she was in Jail and the Police had seized the record. Since there was no cooperation from the side of the assessee and there was no submission of documents, the Special Auditor recommended making of the addition in the hands of the assessee which the Assessing Officer did and the learned CIT (A) upheld. In our opinion, when the responsible Officer was in jail, the high pitch assessment so made does not seem to be fair.

13. In addition, we find that the case of the assessee before the Hon'ble Supreme Court is that the money deposited with them belongs to small investors, part of which has already been distributed/returned to them under the direction of the Hon'ble Supreme Court. On the contrary, the case of the Assessing Officer is that the money belongs to the assessee. These opposing views create a roadblock in the disbursement of funds wrongfully collected from petty investors. In our opinion, if the assessee is not allowed to prove their case, it will lead to public suffering and deprive the petty investors. Therefore, 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 examine the claim of the assessee that the money belongs to the small investors. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the

assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

ITA Nos.354 & 355/Hyd/2023 (Heera Gold Exim Ltd) & ITA Nos.411to 413/Hyd/2023 (Heera Retail (Hyderabad) Pvt. Ltd:

14. After hearing both the sides, we find the grounds raised by the assessee in these appeals are identical to the grounds raised by the assessee in ITA No.353/Hyd/2023 for the A.Y 2015-16. 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 ground raised by the assessee in the above appeals are also remanded to the file of the Assessing Officer for fresh adjudication.

15. In the result, all the appeals filed by the respective assesseees are allowed for statistical purposes.

Order pronounced in the Open Court on 30th April, 2024.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 30th April, 2024

Vinodan/SPS

Copy to:

S.No	Addresses
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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order