

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

BEFORE SHRI MANJUNATHA G, ACCOUNTNAT MEMBER AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

आ.अपी.सं / **ITA No.486/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Sri Varalaxmi Projects Private Limited, Hyderabad. PAN: AAICS9161K	Vs.	Income Tax Officer, Ward-3(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:		Shri S. Venkateswarlu, Advocate
राजस्व द्वारा / Revenue by::		Shri B. Bala Krishna, CIT-DR
सुनवाई की तारीख / Date of hearing:		12/09/2024
घोषणा की तारीख / Pronouncement:		23/09/2024

आदेश/ORDER

PER PRAKASH CHAND YADAV, J.M:

This is the appeal filed by the assessee against the order of Pr. Commissioner of Income Tax, Hyderabad-1 (hereinafter referred to as PCIT-I) dated 14.03.2024 for the Assessment Year 2015-16.

2. The brief facts of the case are that the assessee is a private limited company in the business of construction and development filed its return of income for the impugned assessment year on 8.7.2016 declaring an income of Rs.40,69,920/-. The return filed by the assessee was processed u/s.143(1) of the Income Tax Act, 1961 ("the Act") and thereafter the case

of the assessee was reopened u/s.148 of the Act dated 31.07.2021. During reassessment proceedings, the Assessing Officer has issued a questionnaire u/s.142(1) of the Act on 30.09.2021, 30.12.2021 and 27.01.2022 and so on. The main reason behind the reopening of the assessee's case is that there was an information against the assessee revealing that the assessee has been inflated sundry creditors in his books of account and syphoning of the profits into the personal account of the Directors. In response to the notices issued by the Assessing Officer, the assessee vide its letter dated 4.3.2022 replied to the queries of the Assessing Officer in a comprehensive manner. After the receipt of the reply by the assessee, the Assessing Officer vide notice dated 15.3.2022 issued u/s.142(1) of the Act has asked the assessee the following: -

“a. Please provide source of payments made to the sundry creditors during the year under consideration along with supporting documentary evidences.

b. Please provide copy of ledgers of the shareholders in the books of accounts of the assessee for the year under consideration.

c. Please provide ledgers of Mr. K.V.S.S. Prasad and his sister K. Tulsi Padma in your books of accounts for the year under consideration.

d. Please provide ledger of Virat Infra in the books of accounts of the assessee for the year under consideration and explain the nature of transaction with Virat Infra for the year under consideration.”

2.1 In response to the queries raised by the Assessing Officer in respect of the source of the payments made to creditors, the assessee filed a reply before the Assessing Officer regarding the source of the payments made to sundry creditors. In a nutshell, the assessee replied that the assessee has received payment from its sundry debtors and these payments have been utilised by the assessee for making the payment to the sundry creditors. Assessee also explained that as and when the assessee was receiving funds it was discharging its liabilities. Finding force in the arguments of the assessee as well as in the light of evidences produced by the assessee, the Assessing Officer could not make any addition in reassessment proceedings.

2.2 Thereafter the PCIT-I, exercising his powers of section 263 of IT Act, vide notice dated 2.2.2024 asked the assessee as to why the order of Assessing Officer could not be declared as erroneous and prejudicial to the interest of the revenue. In response to the notice u/s.263 of the Act, the learned counsel for the assessee vide its reply dated 27.02.2024 (page No.155 of the paper book) pointed out that the notice of 263 has been issued on the basis of incorrect assumption of facts. The learned counsel for the assessee further pointed out that the assessee has filed voluminous replies and evidences during reassessment proceedings to prove the source

of the payment made to creditors. Referring to the correspondence between the Assessing Officer and the assessee, during reassessment proceedings, the learned counsel for the assessee submitted that notice of 263 may kindly be revoked. However, the PCIT-I could not find any force in the submissions of the assessee and declared the order of Assessing Officer as erroneous and prejudicial to the interest of revenue vide the impugned order.

3. Aggrieved with the order of the PCIT-I, the assessee has come up in appeal before us and contended that the PCIT-I has erred in assuming jurisdiction over the assessee u/s.263 of the Act for the following reasons –

(a) no fresh sundry creditors were there in the books of the assessee during the year under consideration.

(b) view of the PCIT-I that source of payments made to creditors remain unexplained as factually incorrect and contrary to the records.

(c) view of the PCIT-I that provisions of section 69A ought to have been applied by the Assessing Officer vis-à-vis repayment to sundry creditors is also not correct because all the transactions were duly recorded in the audited books of account.

(d) learned counsel for the assessee has also challenged the legality of action u/s.148 notice collateral proceedings.

4. The Ld. DR appearing on behalf of revenue vehemently argued that the assessee has failed to establish the source of the payments and hence the PCIT-I is correct in holding that the order of the Assessing Officer is erroneous and prejudicial to the interest of revenue.

5. After considering the rival submissions, we observe that in this case it is an admitted position of facts, as coming out from the relevant extracts of ledger accounts, placed at **page 100-121** of the paper book, that the assessee had duly explained the source of payments made to the sundry creditors. We further observe that there are no fresh sundry creditors in the current year and hence there was no question of examining the genuineness of such sundry creditors in the year under consideration. Similarly, it is observed that in this case before passing of final assessment order, the National Faceless Appeal Centre unit has also passed a draft assessment order on 26.03.2022. Perusal of this draft assessment order, copy of which is placed in paper book at pages 126 to 130, would show that an addition of Rs.10.3 Crores was proposed to be made in the hands of the assessee u/s. 69A of the Act. Thereafter, the assessee vide its letter dated 26.03.2022 filed its objections to the draft assessment order inter alia contended that provisions of section 69A of the Act cannot be applied to those entries which are recorded in the books of account. We observe that finding merit in the explanation of the assessee, the NFAC could not make

any addition in final assessment order. It is pertinent to note here that before the reopening of the case of the assessee the investigation unit of the department had also issued summons to assessee on 11.01.2021 and asked the assessee to justify the payments made to the sundry creditors. In response the assessee had duly responded therefore it is not a case where there is lack of enquiry at all. In these circumstances, we are of the view, it cannot be said that the Assessing Officer while acting as an investigator could not conduct proper enquiry and it is also not a case where while acting as an adjudicator, the Assessing Officer has not taken one of the plausible views. Therefore, we are of the view that the impugned assessment order is neither erroneous nor prejudicial to the interest of revenue and hence the PCIT- 1 is not justified in assuming the jurisdiction of 263 of the Act, hence the order of 263 is hereby quashed. Since we have already decided the appeal of assessee on merits, the arguments of the assessee that in this case action of 147 itself bad in law and hence 263 is also bad in law would become academic and hence we are not deciding that issue.

In the result, the appeals filed by the assessee is allowed.

Order pronounced in the open Court on 23rd Sept., 2024.

Sd/-

(MANJUNATHA G)
ACCOUNTANT MEMBER

Sd/-

(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Hyderabad.

Dated: 23.09.2024.

* *Reddy gp*

Copy of the Order forwarded to :

1. M/s. Sri Varalakshmi Projects Pvt. Ltd., Villa No.9, Indu Fortune Fields, KPHB 13th Phase, Malaysian Township, Kukatpally, Hyderabad-500072
2. ITO, Ward 3(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,