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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.1565/Hyd/2019**
(निर्धारण वर्ष / Assessment Year: 2016-17)

Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad.	Vs.	M/s. YKH Builders Pvt. Ltd., Hyderabad. PAN:AAACY2622H
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri H. Srinivasulu, Advocate	
राजस्व द्वारा / Revenue by:	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख / Date of hearing:	27/11/2024	
घोषणा की तारीख / Pronouncement:	06/12/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by Revenue, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), dated 16.07.2019 for the A.Y. 2016-17.

2. The Revenue has raised the following grounds :

"1. The ld.CIT(A) erred both in law and on facts of the case in allowing relief to the assessee.

2. The ld.CIT(A) erred in deleting the addition made of Rs.6.49 crores towards commercial space allocation without appreciating the fact that the assessee has not offered this entire amount as income even though during the appellate proceedings has taken a stand that it has declared the entire receipts as income for the AY 2017-18.

3. The ld.CIT(A) is factually incorrect in holding that the assessee has declared the entire receipts as income for the AY 2017-18 when the assessee has not offered this entire income.

4. The ld.CIT(A) failed to appreciate the fact that the assessee himself had declared in the statement u/s. 132(4) of the Act on 10.11.2016 that he had admitted business income to an extent of Rs.5 crores for AY 2016- 17.

5. The ld.CIT(A) erred in not appreciating the fact that the initial statement was given u/s. 132(4) of the Act admitting the business income after due consideration of all facts and, therefore the retraction made by the assessee while filing the return of income does not constitute good evidence.

6. The ld.CT(A) erred in not relying upon the decision as held by the Hon'ble M.P High Court in the case of SS Ratanchund Bholanath Vs. CIT 210 ITR 682, where in it was held that "when assessee admitted that a particular income is liable to be included in its total income, assessment made is such admission is valid"

7. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary."

3. The brief facts of the case are that, M/s. YKH Builders Pvt. Ltd. (“the assessee”) is a company engaged in the business of real estate, construction, development of residential and commercial complexes in Hyderabad. The Return of Income (“ROI”) for A.Y. 2016-17 was filed by the assessee on 16.10.2016 admitting loss of Rs.5,00,430/-. The Ld. AO selected the case of the assessee for scrutiny by issuing notice u/s.143(2) of the Income Tax Act, 1961 (“the Act”) on the basis of parameter mentioned at para 1(ii) of the guidelines for selection of cases for scrutiny issued by CBDT vide Instruction No.5/2017 dated 7.7.2017 (“CBDT instruction”). The Assessing Officer completed the assessment u/s.143(3) of the Act on 28.12.2018 determining the total income at Rs.14,96,11,778/-. Aggrieved by the order of Ld. AO, the assessee filed appeal before the Learned Commissioner of Income Tax (Appeals) (“Ld. CIT(A)”, The Ld. CIT(A) gave complete relief to the assessee. Aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us against the deletion of Rs.6.49 Crores which was one of the additions made by the Ld. AO.

4. At the outset, with the permission of the bench, the Learned Authorised Representative (“Ld. AR”) made his

submission in pursuance of Rule 27 of Income Tax (Appellate Tribunal) Rules, 1963. The Ld. AR made his submission on technical issue as well as on merits. For the sake of brevity, we first adjudicate on the technical issue raised by the Ld. AR. The Ld. AR submitted that the case of the assessee had been selected for scrutiny u/s.143(3) in violation of CBDT instruction. The Ld. AO issued notice u/s.143(2) of the Act to the assessee on the basis of parameter mentioned at para 1(ii) of the CBDT instruction. However, the said parameter was for selection of person in whose case survey u/s.133A of the Act has been conducted. The Ld. AR also submitted that, as no survey operation u/s.133A of the Act was conducted in the case of assessee, the issue of notice u/s.143(2) of the Act on the basis of para 1(ii) is void ab initio and the order passed by the Ld. AO u/s.143(3) dated 28.12.2018 is bad in law and is liable to be quashed.

5. Per contra, the Ld. DR relying on the findings of the Ld. CIT(A) submitted that, there was no contravention of CBDT instruction and the order passed by the Ld. AO do not suffer from any illegality.

6. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. It is necessary to go through the notice issued by the Ld. AO u/s.143(2) of the Act dated 19.09.2017 and the CBDT instruction, the relevant portion of which are reproduced as under :

Reproduction of Notice u/s.143(2)

*“ Notice under section 143(2) of the Income Tax Act, 1961
Compulsory Manual Selection*

Sir/Madam/M/s.

1(ii) This is for your kind information that the return of income for Assessment Year 2016-17 filed vide ack. No.505091241161016 on 16/10/2016 has been selected for Scrutiny on the basis of parameter at Para 1(ii) of the Manual Compulsory Guidelines of CBDT issued vide Instruction No.5/2017 dated 07.07.2017.”

Reproduction of CBDT Instruction

“Instruction No....5.../2017

Government of India

Ministry of Finance

Department of Revenue (CBDT)

North-Block, New Delhi the 7th of July, 2017

To

All Pr. Chief-Commissioners of Income-tax/Chief-Commissioners of Income-tax All Pr. Directors-General of Income-tax/Directors-General of Income-tax.

Sir/Madam

Subject: Guidelines for selection of cases for scrutiny during the financial-year 2017-2018-regd.-

1. In supersession of earlier Instructions on the above subject, the Board hereby lays down the following procedure and criteria for compulsory manual selection of returns/cases requiring scrutiny during the financial-year 2017-2018:-

(i) Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact of following amounts:

- in excess of Rs. 25, lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune, while at other charges, quantum of such addition should exceed Rs. 10 lakhs;

- for transfer pricing cases, quantum of such addition should exceed Rs. 10 crore

and where:

a) such an addition in assessment has become final as no further appeal was/has been filed; or

b) such an addition has been confirmed at any stage of appellate process in favour of revenue and assessee has not filed further appeal; or

c) such an addition has been confirmed at 1st appeal stage in favour of revenue or subsequently and further appeal of assessee is pending.

(ii) All assessments pertaining to Survey under section 133A of the Income-tax Act, 1961 ('Act') excluding those cases where books of accounts, documents etc. were not impounded and returned income (excluding any disclosure made during the Survey) is not less than returned income of preceding assessment year. However, where the assessee

retracts from disclosure made during the survey such cases will not be covered by this exclusion.”

On going through the above document, it is evidently clear that as per para no.1 of the notice issued u/s.143(2) of the Act, the said notice has been issued on the basis of parameter prescribed in para 1(ii) of the CBDT instruction which lays down the criteria for compulsory manual selection of scrutiny of returns / cases pertaining to survey u/s.133A of the Act. We have also gone through the order of Ld. AO and Ld. CIT(A) where the revenue authorities have not brought any facts on record that any survey operation has been conducted in the case of the assessee. Therefore, in our considered opinion, as there was no survey u/s.133A of the Act in the case of the assessee, the case of assessee does not fall in the category given in para 1(ii) of CBDT instruction and the notice issued u/s.143(2) of the Act on the basis of said para 1(ii) is bad in law being beyond the power of Ld. AO. Therefore, we hold that the assessment order passed by the Ld. AO u/s.143(3) of the Act on the basis of an invalid notice is liable to be quashed. Accordingly, we quash the order of the Ld. AO and dismiss the appeal of the assessee.

7. As we have decided the issue against the revenue on technical ground, we are not adjudicating the appeal on merits.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 6th Dec., 2024.

Sd/-

**(VIJAY PAL RAO)
VICE PRESIDENT**

Sd/-

**(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER**

Hyderabad.

Dated: 06.12.2024.

* *Reddy gp*

Copy of the Order forwarded to :

1. M/s. YKH Builders Pvt. Ltd., C3, Express Apartments, Lakdikapul, Hyderabad-500 004
2. ACIT, Central Circle 3(2), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,