

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

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.207/Hyd/2019		
Assessment Year: 2015-16		
Dy. C.I.T Central Circle 1(1) Hyderabad	Vs.	Ashok Developers & Builders Ltd, Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri K.C. Devdas, CA	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	12/07/2022	
Date of pronouncement:	19/07/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the Revenue is directed against the order dated 30.09.2018 of the learned CIT (A)-11, Hyderabad relating to A.Y.2014-15.

2. Facts of the case, in brief, are that the assessee is a limited company and engaged in the business of constructions. It filed its return of income on 30.09.2015 declaring total income of Rs.6,61,44,100/-. A search & seizure operation u/s 132 of the Act was carried out in the assessee's group of cases on 18.02.2016. In response to the notice u/s 153A, the assessee filed revised return of income on 7.9.2016 declaring income of Rs.13,58,60,960/-.

Subsequently the Assessing Officer issued statutory notices u/s 143(2) and 142(1) of the I.T. Act, 1961. The Authorised Representative of the assessee appeared from time to time and filed the requisite details. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 153A of the I.T. Act determining the total income at Rs.20,78,40,695/- by making various additions.

3. Before the learned CIT (A), the assessee apart from challenging the various additions on merit challenged the validity of the assessment proceedings on the ground that no incriminating material was found during the course of search and the statement recorded u/s 132(4) does not constitute any incriminating material. The assessee before the learned CIT (A) also relied on various decisions.

3.1 Based on the arguments advanced by the assessee, the CIT (A) held the initiation of proceedings u/s 153A of the Act as invalid and therefore, the orders made thereunder are not sustainable. The relevant observation of the learned CIT (A) from Para 6 onwards reads as under:

6.0) I have gone through the facts of the case and the submissions of the appellant. On the issue of validity of initiation of proceedings u/s 153A, where no incriminating material was found during the course of search. In the instant case, the additions are made based on the statement recorded during the course of search.

6.1) A question arises whether the statement recorded during the course of search can be treated as incriminating material found during the course of search. In the following decisions, it was held that the statement recorded u/s 132(4) cannot be treated as seized/incriminating material:

i) Moon Beverages Ltd & Hindustan Aqua Ltd. Vs. ACIT, Central Circle 15, New Delhi in ITA No. ITA No.7374/Del/2017 And ITA No.7567/Del/2017.

ii) Brahmaputra Finlease (P) Ltd. vs. DCIT vide ITA No.332/Del/2017 order dated 29.12.2017.

iii) Hon'ble Delhi High Court in the case of CIT Vs. Best Infrastructure (India) (P) Ltd. reported in 397 ITR 82.

iv) A) Decision of the Hon'ble Delhi High Court in the case of CIT Vs. Harjeev Aggarwal reported in 290 CTR 263.

v) M/S M.L. Singhi & Associates (P) Ltd. Versus Deputy Commissioner of 5) Income Tax, Central Circle-7, New Delhi in ITA No. 3335/Del/2017, ITA No. 3336/Del/2017 and ITA No. 3337/Del/2017 [2018 (10) TMI 50 ITAT, Delhi.

6.2) In the case of Moon Beverages Ltd & Hindustan Aqua Ltd. Vs. ACIT, Central Circle 15, New Delhi in in ITA No. ITA No.7374/Del/2017 And ITA No.7567/Del/2017, it was held that:

"Since the addition made by the Assessing Officer is not based on any incriminating material found during the course of search and addition has been made on the basis of post-search enquiry and on the basis of statements recorded u/s 132(4) of the I.T.Act, therefore, the same cannot constitute incriminating material so as to enable the Assessing Officer to assume jurisdiction u/s 153A of the Act I.T. Act"

Respectfully, following the ratio laid down above, it is held that the statement recorded u/s 132(4) cannot be treated as seized / incriminating material for making addition u/s 153A of the Act for the above two assessment years. Accordingly, the initiation of proceedings u/s 153A is held to be not valid and the orders made thereunder are not sustainable.

6.3 As I have decided that the proceedings u/s 153A are not validly 6.3) initiated in the absence of any seized material, the assessment orders passed for the AYs 2014-15 and 2015-16 are held to be not sustainable in law. The ground nos. 1 & 2 are allowed. The other grounds raised for the above two A.Ys are not adjudicated as the 153A proceedings are held to be not validly initiated."

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

1. The Ld. CIT(A) erred both in law and on facts of the case.

2. The Ld. CIT(Appeals) erred in holding that proceedings u/s.153A were not validly initiated ignoring the fact that the assessee had admitted u/s. 132(4) of the Act, undisclosed business income and Undisclosed Capital Gains on the basis of incriminating evidence available in the seized material.

3. The Ld. CIT(A) erred in ignoring the fact that the assessee filed the Return in response to notice u/s. Rs.2,20,76,780/- and undisclosed

capital gains of Rs.5,19,70,000/- admitted u/s. 132(4) during search operation. 153A disclosing the undisclosed business income of

4. The Ld. CIT(A) erred in ignoring the fact that the time limit for issuing notice u/s. 143(2) has not expired by the date of search and therefore the Assessing Officer is entitled to examine all the issues irrespective of the availability or otherwise of incriminating material.

5. The Ld. CIT(A) ought to have appreciated that the principle of estoppel is applicable to the facts of the case as the assessee prevented the Department from causing further investigation by giving voluntary admission with regard to Capital gains on sale of commercial space, at the time of search.

6. The Ld. CIT(A) erred in not appreciating the fact that the addition made on account of Capital Gains on sale of commercial space is on the basis of statement given by the Executive Director of the Company u/s. 132(4) of the Act on comparison of amounts mentioned as consideration in the Agreement of Sale.

7. The Ld.CIT(A) erred in not relying upon the decision as held by the P & H High Court in the case of Charanjit Kumar Vs. CIT (2006) 201 CTR 37: "Retraction should be at the earliest opportunity or at least within reasonable time."

8. The Ld. CIT (A) erred in not relying upon the decision as held by Hon'ble MP High Court in the case of SS Ratanchand Bholanath Vs. CIT 210 ITR 682: "When assessee admitted that a particular income is liable to be included in its total income assessment made in such admission is valid".

9. The appellant craves leave to amend or alter any ground(s) or add a new ground which may be necessary."

5. The learned DR submitted that lot of incriminating materials were found and seized during the course of search. However, the learned CIT (A) without considering the copy of the panchnama and the various annexures etc., seized during the course of search simply held that no incriminating material was found during the course of search. Further, the learned CIT (A) held that the statement recorded u/s 132 (4) cannot be treated as seized/incriminating material for making addition u/s 153A. He submitted that when there were lot of material seized during the course of search, therefore, the learned CIT (A) without

considering any of the seized material could not have passed the order. Further, he has not decided the issue on merit. Therefore, he has no objection, if the matter is set aside to the file of the learned CIT (A) with a direction to adjudicate the issue afresh by considering the seized material and give his findings.

6. The learned Counsel for the assessee, on the other hand, while supporting the order of the learned CIT (A) submitted that no seized material was found during the course of search and the copy of the Board Resolution which was seized does not constitute incriminating material. He submitted that the learned CIT (A) has passed a speaking order and therefore, the same should be upheld.

7. 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. It is an admitted fact that a search & seizure operation took place in the premises of the assessee on 18.02.2016 and certain incriminating documents were found and seized. We find the AO in the order passed u/s 143(3) r.w.s. 153A of the Act determined the total income at Rs.20,78,40,695/- as against the returned income of Rs.13,58,60,960/-. We find the learned CIT (A) on the basis of the arguments advanced by the assessee held that the initiation of proceedings u/s 153A is not valid, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned DR that the learned CIT (A) without considering the incriminating material found during the course of search has held that 153A proceedings are not valid and he has not decided the issue on merit. A perusal of the order of

the learned CIT (A) shows that neither he has decided the appeal on merit, nor has he passed any comments regarding the various incriminating material found during the course of search and he has simply accepted the contention of the assessee that no incriminating material was found during the course of search. Considering the totality of the facts of the case and in the interest of justice, we deem it fit and proper to restore the issue to the file of the learned CIT (A) with a direction to give his finding regarding the nature of incriminating material found during the course of search and decide the issue keeping in mind the decision of the Hon'ble Andhra Pradesh High Court in the case of Gopal Lal Badruka Vs. DCIT, 346 ITR 106 (AP). The grounds raised by the Revenue are accordingly allowed for statistical purposes.

8. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 19th July, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 19th July, 2022.

Vinodan/sps

Copy to:

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2	M/s. Ashoka Developers & Builders Ltd, D.No.8-2-120/112/P/7, Unit No.401, Ashoka Capital, Opp: KBR Park, Road No.2 Banjara Hills, Hyderabad 500034
3	CIT (A)-11 ,Hyderabad
4	Pr. CIT-Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order

SAG
INFOTEC