

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1904/Hyd/2019		
Assessment Year:2009-10		
Sri Surya Constructions, Hyderabad. PAN: ABKFS 1402 P	Vs.	Income Tax Officer, Suryapet.
(Appellant)		(Respondent)
Assessee by:	Shri S. Rama Rao	
Revenue by:	Shri A. Venkata Rao, DR	
Date of hearing:	15/03/2021	
Date of pronouncement:	21/06/2021	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-3, Hyderabad in appal No. 0890/ITO/Syp/CIT (A)-3/2014-15, dated 20/05/2019 passed U/s. 143(3) r.w.s 147 and U/s. 250(6) of the Act for the AY 2009-10.

2. The assessee has raised four grounds in its appeal and they are extracted herein below for reference:-

"1. The order of the CIT (A) is erroneous both on facts and law.

2. The Ld. CIT (A) erred in confirming the action of the AO in estimating the turnover at Rs. 1,21,46,655/- without considering the actual sales effected during the previous year.

3. *The Ld. CIT (A) ought to have considered the fact that the sale of properties during the year are identifiable and there is no requirement for the Assessing Officer to estimate the turnover.*

4. *Any other ground that may be urged at the time of hearing.”*

3. At the outset, the Ld. AR submitted before me that there is a delay of 122 days in filing the appeal before the Tribunal. In this regard, the assessee's Counsel had submitted a petition for condonation of delay wherein the reasons for filing the appeal beyond the prescribed time limit was explained. For reference, the relevant portion from the affidavit is extracted herein below: -

“.....During the relevant period the Chartered Accountant of the petitioner firm was pre-occupied with the preparation and filing of return of income the last date for which was 31/8/2019. The order of the Ld. CIT (A) got mixed up with other files and was lost sight of. When the AO was pressurizing for payment of demand, consequent to the disposal of first appeal, the matter of receipt of appellate order was recollected. They searched the office record but the order could not be traced. Therefore, the Chartered Accountant obtained a copy of the appellate order of CIT (A) from the office of the AO. The appeal institution fees was immediate paid on 20/12/2019. The preparation of appeal before the Tribunal entrusted to an Advocate at Hyderabad. Sri S. Rama Rao, Advocate underwent cataract surgery on 24/12/2019 and he was not attending the office since 21/12/2019. The appeal was prepared on 27/12/2019 and the same is being filed before the Hon'ble Tribunal on 27/12/2019. There is a delay of 122 days in filing the appeal. The appellant humbly submits that the delay is for the reasons submitted above.....”

4. On perusal of the affidavit filed by the assessee's Counsel We find that the delay of 122 days in filing of the assessee's appeal before the Tribunal has occurred due to the files being misplaced and ill health of the assessee's counsel. Hence I am of the view that though there is some

negligence on the part of the assessee it deserves some leniency. Therefore, in the interest of Justice I hereby condone the delay of 122 days in filing both the appeals and proceed to adjudicate the matter on merits.

5. The brief facts of the case are that the assessee is a firm engaged in the business as builders and developers filed his return of income for the AY 2009-10 on 14/5/2010 declaring total income of Rs. 33,900/-. Thereafter the case of the assessee was taken up for scrutiny and assessment was completed vide order dated 13/12/2011 wherein the Ld. AO estimated the income of the assessee on the sale of built-up space at Rs. 18,22,000/- along with another addition amounting to Rs. 4,16,010/-. On appeal, the Ld. CIT (A) granted relief to the assessee with respect to the addition of Rs. 4,16,010/- however, confirmed the addition made for Rs. 18,22,000/- aggrieved by which the assessee is on appeal before us.

6. During the course of scrutiny assessment proceedings, it was revealed that the assessee has not maintained his books of accounts. It was also revealed that the assessee had sold built up space for Rs. 1,21,46,655/-. Since the assessee could not furnish sufficient details to determine the profit arising out of the sale of the built-up space of Rs. 1,21,46,655/- the Ld. AO estimated the income on the sale @15%

on the turnover which works out to Rs.18,22,000/- and brought the same to tax. Even before the Ld. CIT (A) the assessee could not furnish the particulars of his income with respect to the sale of built-up space. Therefore, the Ld. CIT (A) magnanimously relied on the provisions of section 44AD of the Act and sustained the addition at 8% of the Turnover.

7. At the outset, I find that neither the assessee nor its representative could furnish any evidence before me as well for having maintained the books of accounts and relevant documents. Therefore, in this situation I do not find it necessary to interfere with the order of the Ld. CIT (A) who has already granted generous relief to the assessee.

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

9. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, I find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, I have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

Pronounced in the open Court on 21st June, 2021.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 21st June, 2021.

OKK

Copy to:-

- 1) Sri Surya Constructions, D.No. 1-1-388/2, A.V. Enclave, Behind Water Tank, Suryapet, Nalgonda District.
- 2) Income Tax Officer, Krishna Nagar, Suryapet, Nalgonda District.
- 3) The CIT (A)-3, Hyderabad.
- 4) The Pr. CIT-3, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File