IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

(THROUGH VIRTUAL CONFERENCE)

ITA Nos. 1395 & 1396/Hyd/2019
Assessment Year: 2015-16

P. Venkata Ramana Reddy, Hyderabad.	Vs	Asst. Commissioner of Income-tax, Circle – 14(1), Hyderabad.
PAN – ADFPP 2181 F		
(Appellant)		(Respondent)

For Assessee : Shri P. Murali Mohan Rao
For Revenue : Shri Sunil Kumar Pandey

Date of Hearing : 25-11-2020
Date of Pronouncement : 03-02-2021

O R D E R

PER P. MADHAVI DEVI, J.M. :

Both are assessee's appeals for AY 2015-16. ITA No. 1395/Hyd/2019 is against the order of CIT(A) – 6, Hyderabad, dated 08/07/2019 confirming the assessment order passed by the AO u/s 143(3) of the IT Act, while, ITA No. 1396/Hyd/2019 is against the order of the CIT(A) – 6, Hyderabad dated 08/07/2019 confirming penalty levied by the AO u/s 271(1)(c) of the IT Act.

2. Brief facts of the case are that the assessee, an individual, filed his e-return of income for the Ay 2015-16 on 05/01/2017 admitting total income at Rs. 56,30,000/-. The said return was initially processed u/s 143(1) of the Act and subsequently, the case was selected for scrutiny under CASS. During the assessment proceedings u/s 143(2) of the Act, the assessee was asked to produce details of property and sources for cash deposits in the bank account. In response to the same, the assessee submitted details of his properties, bank statements and submitted that the properties belong to the company M/s Indus Creators Pvt. Ltd. and were purchased as a representative for the company. In support of the same, assessee submitted the copies of the sale deeds and after considering the same, the AO accepted the explanation and did not draw any adverse inference.

2.1 With regard to cash deposits, the assessee submitted that these were his business receipts and that the assessee has admitted business income u/s 44AD. When asked to submit the evidence of his carrying on construction activity, he submitted that he is not in a position to produce any evidences/confirmations for the same. The assessee's representative also submitted that he has worked out peak cash credit taking the bank account into consideration and requested that the peak cash credit of Rs. 1,23,90,000/- be treated as his income and also further requested

that the income already offered u/s 44AD of Rs. 7,49,200/- be reduced from the total peak cash credit. Thus, he requested the peak cash deposits of Rs. 1,23,90,000/- to be treated as his income. The AO accepted the assessee's contention and after reducing the sum of Rs. 7,49,200/-, which has already been offered to tax, the balance amount of Rs. 1,16,40,800/- was brought to tax as unexplained cash credits.

3. Aggrieved, the assessee preferred an appeal before the CIT(A) stating that the statutory notice u/s 143(2) was issued without intimating the issues that have been identified for examination under limited scrutiny under CASS, which is against the guidelines of the CBDT on this subject and that the AO has erred in exceeding the limits as laid down under limited scrutiny by calling for information other than the issues covered under limited scrutiny and, thus, the assessment order was passed without jurisdiction. The other grounds raised by the assessee were that the addition of Rs. 1,16,40,800/- towards peak cash deposits is erroneous as the AO did not consider that the contract receipts to the extent of Rs. 93,65,000/- were also deposited in to the bank account and that the assessee has offered income on the same at 8% u/s 44AD of the Act. He also submitted that the appellant had himself offered additional income of Rs. 30,25,000/- in the revised computation of the income during the course of

assessment and if the same is considered, there is no need for any addition as the entire amount of Rs. 1,16,40,800/- has already been offered to tax.

3.1 The CIT(A), however, confirmed the assessment order by observing that the addition made by the AO is an agreed addition and therefore the assessee cannot challenge it subsequently without bringing any distinguishable facts on record. As regards the validity of the notice u/s 143(2) in violation of CBDT Circular, he held that the assessee's return of income was selected for limited scrutiny under CASS and the said issues were made known to the assessee during the assessment proceedings and after receiving the assessee's submissions and consideration thereof only, the assessment u/s 143(3) was completed. Therefore, according to the CIT(A), provisions of section 292B and 292BB would apply to asesssee's case and, hence, assessment is valid. Against this order of CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

> *"1. The Ld.CIT (A) erred both on facts and in law by dismissing the appeal.*
>
> *2. The Ld.CIT (A) ought to have fairly adjudicated the case basing on the facts and circumstances of the case, grounds of appeal ,submissions and clarifications filed by the assessee.*
>
> *3. The Ld.CIT (A) erred in confirming the addition made by AO without considering that facts and circumstances of the case.*

4. The Ld. CIT(A) ought to have appreciated that the statutory notice issued u/s 143(2) was without intimating the issues that have been identified for examination under limited scrutiny under CASS, which is against the guidelines of the CBDT on this subject.

5. The Ld. CIT(A) ought to have appreciated that AO erred in exceeding the limits as laid down under limited scrutiny CASS by calling for other information other than the issues covered under limited scrutiny is, thus the assessment is without jurisdiction and is invalid.

6. The Ld. CIT(A) ought to have fairly appreciated that AO erred in making addition of Rs.1,16,40,800/ - towards peak cash deposit without considering that the contract receipts to the extent of Rs.93,65,000/ -,was also deposited in the bank account.

7. The Ld. CIT (A) erred by not properly appreciating the fact that the appellant has offered the additional income of Rs.30,25,000/ -in the revised computation of income during the course of assessment.

8. The Ld. CIT (A) ought to have well appreciated that the assessee has offered income at 8 percent of the contractual receipts u/s 44AD of the Act.

9. The Ld. CIT(A)ought to have fairly appreciated that an income of Rs.7,49,200/- was offered on the contract amount of Rs.93,65,000/- and balance of Rs.30,25,000/ - needs to be considered for addition.

10. The Ld.CIT(A) erred in dismissing the appeal merely because the AR of the assessee was shown to have agreed to the addition, without bringing on record any corroborative evidence to show as to which form of corresponding asset the above amount is lying with the assessee.

11. The Ld.CIT(A)ought not have come to a conclusion that the AR of the assessee has agreed to the addition, Since no quasi judicial assessment can be made based on agreement between AO and the assessee without having a corroborative evidence brought on record in relation to such addition.

12. The Ld.CIT(A) merely on the contention of the AR that the amount of Rs.7,49,000/- may be reduced from the peak

credit of Rs.1,23,90,000/- came to a conclusion that AR of the assessee has agreed for the addition.

13. The Ld.CIT(A)ought to have fairly appreciated that cash credit in savings bank account of the assessee have been made from disclosed sources of income of the assessee.

14. The Ld.CIT(A) erred in not appreciating the documentary evidences submitted by the assessee in support of his claim.

15. The Appellant may add or alter or amend or modify or substitute or delete and or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal."

3.2 In addition to the above, vide letter dated 02/03/2020, the assessee has raised the following additional grounds of appeal:

16. As per the ratio laid down by the Honourable Supreme Court of India in the case of National Thermal Power Co. Ltd v. CIT (1998) 229 ITR 383 (SC), the Hon'ble ITAT has jurisdiction to examine the question of law which has been taken before the ITAT for the first time though not taken before the first appellate authority.

17.(a) The Ld. CIT(A) ought to have appreciated that the impugned assessment is invalid abinitio on the ground that the scrutiny notice issued u/s 143(2) is erroneous which is not curable u/s 292B and 292BB of the Act.

(b)The Ld. CIT(A) ought to have appreciated that the scrutiny notice issued u/s 143(2) is in violation of clauses 3(a) & 3(b) of CBDT Instruction NO.20/2015 dated 29.12.2015 issued in relation to scrutiny cases selected under Computer Aided Scrutiny Section (CASS)

(c) The Ld. CIT(A) ought to have appreciated that since the relevant column in the scrutiny notice u/s 143(2) of the Act has, admittedly, been left blank without specifying the issue identified for examination, the very notice is invalid thereby rendering the impugned assessment invalid abinitio.

(d) The Ld. CIT(A) erred in holding that the format of the notice u/s 143(2) of the Act is not a statutory format and, therefore, it is not mandatory that the Assessing Officer

should incorporate the issues in respect of which the case was selected for scrutiny.

(e) The Ld. CIT (A) ought to have appreciated that merely because the assessee has not raised any objection and has participated in the assessment proceedings, it cannot be said that the impugned defective notice issued u/s 143(2) of the Act would be cured.

(f) The Ld. CIT(A) erred in holding that omission on the part of the Assessing Officer in mentioning the issues on the basis of which the case was selected for Limited Scrutiny is not fatal as to the proceedings initiated.

(g) The Ld. CIT(A) erred in holding that the notice u/s 143(2) in which the issues identified for Limited Scrutiny are not mentioned, is otherwise in substance and effect in conformity with the intent and purpose of the Act.

(h) The Ld. CIT(A) erred in holding that the assessment order passed u/s 143(3) of the Act cannot be rendered as void abinitio.

18. Without prejudice to other grounds, the Ld. CIT(A) erred in holding that after having made a clear and unequivocal admission before the Assessing Officer for agreed addition and without there being any retraction from such admission, the assessee has no right of appeal against the assessment order passed.

19. The Ld.CIT(A) erred in confirming the addition made u/s 68 of the act which is invalid since bank statement cannot be elevated into to the status of regular books of accounts as per meaning in the sec 2(12A) r.w.s 44AA of the IT Act, 1961.

20. Without prejudice to other grounds, the Ld. CIT(A) erred in dismissing the grounds of appeal raised on merits of the case, as not maintainable.

21. The Appellant may add or alter or amend or modify or substitute or delete and/ or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal."

4. The matter was taken up for hearing through Video Conferencing and both the parties were heard extensively.

4.1 The grounds of appeal 1 to 3 and 15 & additional ground of appeal No. 21 are general in nature and hence need no adjudication. They are accordingly rejected. The other grounds of appeal and the additional grounds of appeal are against the validity of the notice u/s 143(2) and the merits of the addition.

5. The ld. counsel for the assessee prayed for admission of the additional grounds of appeal by stating that all the necessary facts are on record and the issue raised by the assessee in these grounds is a legal issue, which has been considered by the CIT(A) and that the grounds are against the specific findings of the CIT(A).

6. The ld. DR, on the other hand, opposed the admission of additional grounds.

7. After considering the material on record in the light of above submissions, we find that these additional grounds of appeal are not actually additional grounds as the validity of the notice u/s 143(2) was raised by the assessee before the CIT(A) who adjudicated the same and these grounds now raised are the

arguments against the findings of the CIT(A). Therefore, we deem it fit and proper to admit these additional grounds of appeal.

8. Since, the validity of the notice u/s 143(2) was questioned, during the course of hearing on earlier dates, ld. DR was directed to produce the assessment records before us and the same was produced before us on 25/11/2020.

9. The undisputed facts of the case are that the assessee filed his return of income on 05/01/2017 offering the income from business u/s 44AD of the Act. He has shown gross receipts at Rs. 93,55,000/- and offered the income @ 8% of the same, i.e. at Rs. 7,49,200/-. It is also not in dispute that the assessment was picked up for limited scrutiny through CASS. The points for which the assessment was taken up for scrutiny as per the document produced by the ld. DR during the course of hearing are as under:

Reason code	Reason Description	Issue
TX01.02	Large cash deposits in savings bank account)(s) (AIR, Total turnover and other income in Part A – P&L of ITR)	Whether the cash deposit has been made from disclosed sources.
IN01.01	Large investment in property (AIR) as compared to total income (AIR 006 and total income including exempt income and agricultural income in Part B-TI of ITR)	Whether investment and income relating to properties are duly disclosed.
IN01.01	Large investment in property (AIR) as compared to total income (AIR 006 and total income including exemption and agricultural income in Par B-TI of ITR)	Whether investment and income relating to properties are duly disclosed.
TX01.02	Large cash deposits in savings	Whether the cash deposit

	bank account (s) (AIR, total turnover and other income in Part – A-P&L of ITR)	has been made from disclosed sources.

9.1 Thus, it is evident that assessment was taken up for scrutiny to examine the source of investment in properties and also the sources of the large cash deposits in the savings bank accounts. The main grievance of the assessee is that the reasons for limited scrutiny were not communicated to him along with the notice u/s 143(2) of the Act. Therefore, for adjudicating the additional grounds of appeal, the docket entries of the assessment record need to be considered. The docket are reproduced by the CIT(A) at para 6.4.7 on pages 25 & 26 of his order, but since the same is not legible, the copy of the above entries is also annexed herewith as annexure – 1. Further, the copy of the notice u/s 143(2) issued by the AO, filed at page 1 of the paper book filed by the assessee wherein the column for reproducing the reasons for scrutiny is left bank is also annexed herewith as annexure – 2.

9.2 The ld. counsel for the assessee has brought to our notice the CBDT Instruction No. 20 of 2015, dated 29/12/2015, wherein, vide para 3, (a), (b), (c) & (d) it was directed as under:

> *"3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year - one is 'Limited Scrutiny' and other is Complete Scrutiny'. The assessees concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section143(2) of the Income-*

tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:

a. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.

c. These cases shall be completed expeditiously in a limited number of hearings.

d. During the course of assessment proceedings in' Limited Scrutiny' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny' with the approval of the Pr. CIT/CIT concerned. However, such an approval shall be accorded by the by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating 'Complete Scrutiny' in that particular case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata. Bengaluru, Hyderabad and Ahmedabad).”

Since, the reasons for selecting his return of income for limited scrutiny were not mentioned in the notice u/s 143(2), it is the case of the assessee that it is in violation of the above directions of CBDT (supra) and therefore the consequent assessment order also is invalid.

9.3 The ld. DR had argued that the Instruction No. 20 of 2015 was issued on 29/12/2015 by CBDT and this is being the first

assessment year thereafter, AOs were not completely aware of the requirements and the procedure and though, the reasons for taking up return of income for limited scrutiny was not intimated along with the notice u/s 143(2), the notice did contain the information that the return was selected for limited scrutiny and the reasons for the selection were communicated to the assessee as soon as the assessee appeared before the AO. i.e. on 10/10/2017 i.e. immediately after issuance of notice u/s 143(2) dated 16/09/2017 and therefore, there is no non-compliance of the CBDT instructions and no prejudice has been caused to the assessee by such furnishing of the reasons subsequently. It was further argued that because the assessee had not raised any objection during the assessment proceedings, the proceedings are also covered u/s 292B and 292BB of the Act as held by the CIT(A).

9.4. Having considered the above submissions of both the parties, we find that the CBDT Circular mentions that the concerned assessees should be intimated that their cases fall either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued u/s 143(2) of the Act and the procedure prescribed is that in Limited Scrutiny cases, the reasons/issues shall be forthwith (emphasis provided by us) communicated to the assessee concerned. Thus, this is a procedural condition to be followed.

The dictionary meaning of the word 'forthwith' is 'immediately, without delay'. Therefore, it is not necessary that the reasons should be incorporated in the notice u/s 143(2) itself. It would suffice if the reasons are to be communicated immediately thereafter. We find that the intention behind such a condition is that the assessee should be made aware of the reasons for the scrutiny of his return of income. In the present case, though the reasons have not been incorporated/annexed to the notice u/s 143(2), we find that the assessee was made aware of the reasons for limited scrutiny on the very next date of hearing i.e. 10/10/2017 as is evident from the docket sheet entries and in compliance thereof, the assessee has also provided all the required details on the subsequent date. Therefore, no prejudice has been caused to the assessee by such intimation of the reasons subsequent to the issuance of notice u/s 143(2) of the Act. Further, though the return was selected for scrutiny on two issues, the AO has made addition only on account of one issue, i.e. cash deposits, the sources of which could not be explained by the assessee and, therefore, he has not exceeded his brief of the limited scrutiny. Only where the AO believes that there is income, which has to be brought to tax but is not the issue for the limited scrutiny, he needs to get the permission of the Commissioner to proceed with complete scrutiny assessment. The AO has restricted himself to the limited issues of cash deposits under

CASS and it was the assessee's contention that these are his business receipts, but, could not prove his business activity. Thus, the issue was limited to the cash deposits and as there was no other income, there was no need for the AO to obtain permission from the higher authorities to proceed with complete scrutiny assessment. Therefore, we do not find any reason to hold that there is any non-compliance of CBDT Circular and that the assessment order is invalid. Therefore, the ground of appeal Nos. 4 and 5 and additional grounds of appeal No. 17(a) to 17(h) raised by the assessee are rejected.

10. As regards the grounds of appeal Nos. 6 to 15 and additional grounds of appeal Nos. 18 & 19, on merits of the addition, we find that the assessee, in its return of income filed on 05/01/2017 has shown total civil works receipts of Rs. 93,65,000/- and has offered 8% of the same as his income u/s 44AD of the Act. Further, we find that in the revised computation of income, the assessee had also offered 'income from other sources' of Rs. 30,25,000/-. It is the case of the assessee that if these two figures are taken into consideration, then, assessee's turnover would be Rs. 1,23,90,000/- and, therefore, the sources of entire cash deposits are explained. He further submitted that the bank accounts cannot be considered as books account of the assessee

and, therefore, the addition made by taking into consideration only the bank entries is not sustainable.

11. The ld. DR, however, submitted that the assessee has failed to prove that he had carried on any business/construction activity and, therefore, the income offered by the assessee under section 44AD has not been accepted by the AO. He submitted that the assessee, during the assessment proceedings had, voluntarily agreed for the addition of peak cash credit and therefore, at this stage, he cannot take a U-turn to challenge the same.

12. In rebuttal, the ld. counsel for the assessee submitted that if given an opportunity, the assessee would be able to prove that he was carrying construction activity during the relevant period. He further submitted that in earlier AYs, when the assessee had offered income u/s 44AD, the same has been accepted by the department and, therefore, for the year under consideration also income offered u/s 44AD should be accepted. Further, he also submitted that the assessee's revised computation of income ought to have been considered by the AO. In support of this contention, he placed reliance upon the following case law:

1. CIT Vs. Abhinitha Foundation (P) Ltd., [2017] 83 Taxmann 100 (Mad.)

2. M/s Andhra Pradesh Industrial Development Corporation Ltd. Vs. DCIT, ITA No. 548/H/2017 (ITAT, Hyd.)

13. Having regard to the rival submissions and the material on record, we find that the assessee has offered business income u/s 44AD and has claimed to have carried on construction activity. His argument was that since the aggregate turnover from construction activity was below Rs. 1 crore, there was no need for him to get his accounts audited and thus, the assessee has offered the income u/s 44AD of the Act. He submitted that the requirement of audit is only to arrive at the correct profit of the assessee, but, since the assessee did not maintain the books of account for the relevant year, he could offer the income at a percentage of the turnover u/s 44AD of the Act and therefore, no further enquiry as regards his business activity is needed. However, we find that offering of income by an assessee u/s 44AD of the Act, itself does not preclude the AO from examining the nature of activity carried on by the assessee. If the assessee was carrying on the construction activity, the assessee should have produced some evidence to show that he was involved in such activity. The assessee has not filed any details before the AO or before the CIT(A) or even before us. The assessee submitted that if given an opportunity, he will submit all the details before the AO. Therefore, in the interest of justice, we deem it fit and proper to direct the AO to verify this contention of the assessee de-novo.

13.1 As regards the contention of the assessee that the business receipts of Rs. 93,65,000/- were also deposited into the bank account is concerned, and that the sum of Rs. 30,25,000/- also has been offered as 'income from other sources' in his revised computation of income, but, that it has not been considered by the AO, we find that when the assessee has not been able to explain the source of deposits in the bank account, he himself worked out the peak cash credit and agreed for the addition of peak cash credit. However, on thorough perusal of the assessment record, we found that the assessee along with the covering letter filed on 20/11/2017 had enclosed the revised computation of income i.e. in response to AO's direction to file information for the issues of limited scrutiny. Therefore, the revised computation of income filed at page 7 of the paper book should have been examined. But, there is no reference to the same by the AO, may be because it is not filed by way of revised return of income. However, in view of our direction to examine the income of the assessee u/s 44AD of the Act in the above paragraphs, we deem it fit and proper to remit this issue also to the file of the AO with a direction to consider the same in accordance with law, in the light of the decision of Hon'ble Madras High Court in the case of CIT Vs. Abhinitha Foundation (cited supra) and the decision of the coordinate bench of this tribunal in the case of M/s Andhra Pradesh Industrial Development Corporation Ltd.(cited supra).

The relevant paragraphs are reproduced hereunder for ready reference. The Hon'ble Madras High Court in the case of Abhinitha Foundation (cited supra) has held as under:

> *"18. In sum, what emerges from a perusal of the ratio of the judgments cited above, in particular, the judgments rendered by the Supreme Court in Goetze's India Ltd's case (supra) and National Thermal Power Co. Ltd's case (supra), and those, rendered by the Division Bench of this Court in Ramco Cements Ltd (supra) and Malind Laboratories (P) Ltd (supra) as also the judgments of the Delhi High Court in Sam Global Securities Ltd's case (supra) and Jai Parabolic Springs Ltd 's case (supra), that, even if, the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if, the relevant material was available on record, either by the appellate authorities, (which includes both the CIT (A) and the Tribunal) by themselves, or on remand, by the Assessing Officer. In the instant case, the Tribunal, on perusal of the record, found that the relevant material qua the claim made by the assessee company under Section 80 IB (10) of the Act was placed on record by the assessee company during the assessment proceedings and therefore, it deemed it fit to direct its reexamination by the Assessing Officer."*

13.2 The coordinate bench of this tribunal in the case of M/s Andhra Pradesh Industrial Development Corporation Ltd.(cited supra) has held as under:

> *"3. We have heard the rival submissions and perused the material on record. The only issue in the present appeal is whether the AO was justified in ignoring the revised computation of total income submitted during the course of assessment proceedings on the ground that no revised return of income was filed. Now, the law is quite settled to the extent that a claim made before the AO by way of a letter even it did not form part of original return of income can be entertained by the AO. It is trite law that income tax proceedings are not adversial proceedings. The decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (2006) 284 ITR 323 (SC) held to be inapplicable to the proceedings before the CIT(A) and Tribunal and it is also well settled that the AO can always entertain a claim made before him by way of letter and in*

this context, it is relevant to refer to the judgements of the Hon'ble Delhi High Court in the following cases:

i. CIT Vs. Sam Global Securities Ltd., [38 taxmann.com 129 (Delhi)];
ii. CIT Vs. Jai Parabolic Springs Ltd., [306 ITR 42] [172 taxman 258 (Delhi)] I.T.A. No. 548/Hyd/2017 :- 6 -:

3.1. Recently, the Hon'ble Madras High Court in the case of CIT Vs. Abhinitha Foundation P. Ltd., [83 taxmann.com 100] held as under:

"12.5 A reading of the aforesaid observations would clearly establish that the arguments advanced by Mr.Ravi that the assessee company could only raise an additional ground and not make a new claim or additional claim is not sustainable. As indicated by us hereinabove, this power of entertaining the claim vests with the appellate authorities based on the facts and circumstances of the case. The power of the appellate authorities to consider claims made based on material already on record is coterminous with the power of the Assessing Officer. The failure to advert to the claim in the original return or the revised return cannot denude the appellate authorities of their power to consider the claim, if, the relevant material is available on record and is otherwise tenable in law. Any other view, in our opinion, will set at naught the plenary powers of appellate authorities.

13. The judgment of the Division Bench of this Court rendered in Shriram Investments case (supra) , which is relied upon by the learned counsel for the Revenue, is clearly distinguishable, as in that case, the assessee had sought assessment of tax by disclosing a lower taxable income, albeit, by filing a second revised return. It is in that context that the Division Bench came to the conclusion that the second revised return, which was filed beyond the period of limitation, being non est in law, would not be considered for the purposes of ascertaining the taxable income.

14. In so far as the judgment of the Supreme Court in the matter of Shriram Investments case (supra) is concerned, according to us, it has no applicability to the issue raised in the instant appeal. In that case, the Tribunal appears to have allowed the claim of the assessee for deduction under Section 35 B of the Act without examining the facts of the case. The assessee, evidently, had neither made a claim before the ITO nor the AAC nor, had he, furnished particulars of the expenditure incurred by it. It is in this context that the Supreme Court observed that the onus of proving facts and obtaining the benefit of a deduction lay on the assessee. It was further observed that since the assessee failed to prove its claim before the ITO or the AAC, the Tribunal could not have allowed the claim on assumption of facts.

15. As indicated above, the ratio on the said judgment is entirely different and therefore, has no applicability to the facts of the instant case.

16. Similarly, the judgment of the Allahabad High Court in the matter of G.S. Rice Mills case (supra) is distinguishable, inasmuch as the assessee had neither made a claim before the ITO nor was any material placed on record in support of the claim. The High Court, in this context, held that the Tribunal was not justified in entertaining the claim made under Section 80G of the Act and thereupon, issuing a consequent direction to the ITO to examine the same on merits.

16.1 As would be evident from the narration of facts set out above, in the present case, the Tribunal has noted that relevant material was placed by the assessee company before the Assessing Officer during the course of the assessment proceedings. Therefore, in our view, the said judgment is also distinguishable.

17. A similar situation arose in the case of Gurjargravures (P.) Ltd. (supra). In this case as well, it was noticed that neither was any claim made before the ITO nor was any supporting material placed on record. It is in this background that no relief was granted. The Supreme Court, in this case, disagreed with the High Court, inasmuch as it sustained the direction of the Tribunal issued to the ITO to grant appropriate relief qua claim made under Section 84 of the Act.

18. In sum, what emerges from a perusal of the ratio of the judgments cited above, in particular, the judgments rendered by the Supreme Court in Goetze's India Ltd.'s case (supra) and National Thermal Power Co. Ltd.'s case (supra), and those, rendered by the Division Bench of this Court in Ramco Cements Ltd. (supra) and Malind Laboratories (P.) Ltd. (supra) as also the judgments of the Delhi High Court in Sam Global Securities Ltd.'s case (supra) and Jai Parabolic Springs Ltd.'s case (supra), that, even if, the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if, the relevant material was available on record, either by the appellate authorities, (which includes both the CIT(A) and the Tribunal) by themselves, or on remand, by the Assessing Officer.

In the instant case, the Tribunal, on perusal of the record, found that the relevant material qua the claim made by the assessee company under Section 80IB (10) of the Act was placed on record by the assessee company during the assessment proceedings and therefore, it deemed it fit to direct its reexamination by the Assessing Officer.

18.1 In our opinion, the view taken by the Tribunal is unexceptionable and therefore, does not merit any interference.

19. Consequently, the Tax Case Appeal is dismissed, leaving the parties to bear their own costs".

3.2. In the light of the law enunciated above, we are of the considered opinion that AO as well as the CIT(A) ought not to have rejected the revised computation filed during the course of assessment proceedings and we therefore, remit the matter back to the file of the AO to consider the revised computation in accordance with the provisions of law.

4. In the result, appeal of assessee is partly allowed for statistical purposes."

Thus, ground 6 to 15 and additional ground Nos. 18 to 19 are treated as allowed for statistical purposes.

14. In the result, appeal of the assessee is treated as partly allowed for statistical purposes.

ITA No. 1396/Hyd/2019.

15. As regards penalty appeal, the ld. counsel for the assessee submitted that the assessee offered income u/s 44AD of the Act and the same has been rejected and the entire cash credits have been taken as income only when the assessee has not filed details of the activity carried on by the assessee. Thus, according to him, it does not mean that the assessee has filed inaccurate particulars of income or that he has concealed the particulars of his income and, therefore, penalty u/s 271(1)(c) is not attracted in his case.

16. The ld. DR, on the other hand, submitted that the assessee has not furnished the relevant information before the AO and, therefore, it amounted to concealment of income and hence, penalty levied is justified.

17. Having regard to the rival contentions and the material on record, we find that the addition has been made because the assessee could not substantiate his claim of construction activity. However, in the quantum appeal, we have set aside the issues to the AO for reconsideration. Therefore, the penalty order is set aside with liberty to the AO to reinitiate penalty proceedings, if need be, after conclusion of the assessment proceedings.

18. In the result, appeal of the assessee is treated as allowed for statistical purposes.

19. To sum up, appeal in ITA no. 1395/Hyd/2019 is partly allowed for statistical purposes and the appeal in ITA No. 1396/Hyd/2019 is also treated as allowed for statistical purposes.

Order pronounced in the open court on 3rd February, 2021.

Sd/-	**Sd/-**
(A. MOHAN ALANKAMONY)	**(P. MADHAVI DEVI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, Dated: 3rd February , 2021.

kv

Copy to :

1. P. Venkata Ramana Reddy, C/o P. Murali & Co., CAs, 6-3-655/2/3,1st Floor, Somajiguda, Hyderabad – 82

2. ACIT, Circle – 14(1), Hyderabad.

3. CIT(A) – 6, Hyderabad.

4. Pr. CIT - 6, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File