

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1883/Hyd/17	2009-10	Rachakatla Yadagiri, Hyderabad [PAN: AFAPR6584B]	Income Tax Officer, Ward-15(2), Hyderabad
1884/Hyd/17	2010-11		
1885/Hyd/17	2012-13		
1886/Hyd/17	2013-14		
1887/Hyd/17	2014-15		
671/Hyd/18	2015-16		

For Assessee : Shri B.Shanthi Kumar, AR
For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 19-01-2021
Date of Pronouncement : 03-02-2021

ORDER

PER BENCH :

These six assessee's appeals for AYs.2009-10, 2010-11, 2012-13, 2013-14, 2014-15 & 2015-16 are directed against the CIT(A)-7, Hyderabad's orders; all dated 05-09-2017 except for AY.2015-16 dt.15-02-2018, passed in appeal Nos.512/2016-17, 513/2016-17, 514/2016-17, 515/2016-17, 516/2016-17 & 012/CIT(A)-7/2017-18 involving proceedings u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 [in short, 'the Act']

Heard both the parties. Case files perused.

2. It transpires during the course of hearing that the assessee's identical four substantive grounds raised in the instant batch of six appeals seeks to reverse both the lower authorities' action assessing the alleged suppressed gross receipts of Rs.17,05,140/-, Rs.8,74,500/- (in former two AYs.2009-10 & 2010-11) to the extent of 100% followed by similar additions of Rs.1,03,65,275/-, Rs.89,54,524/-, Rs.89,98,282/- and 1,66,10,192/- in latter four assessment years to the tune of 50%; in the corresponding assessments followed by the CIT(A)'s orders granting relief to the extent of 10% (in AYs.2012-13 to 2015-16); respectively.

3. Learned authorised representative vehemently contended during the course of hearing that it is not the gross amount of the alleged suppressed gross receipts but only the profit element embedded therein which deserves to be assessed in the assessee's hands. Case law DCIT Vs. Panna Corporation [74 DTR 89] (Guj), CIT Vs. Sharda Real Estate Pvt. Ltd., [99 DTR 100] (MP-HC) is cited in support of assessee's profit element assessment contention as well.

4. Mr.Pandey, placed a very stray reliance on the lower authorities' action under challenge.

5. We have given our thoughtful consideration to the foregoing rival pleadings. We make it clear first of all that both the lower authorities have adopted a mutual contradictory stand in assessing the assessee's entire alleged suppressed gross receipts in former two years 2009-10 & 2010-11 followed by assessment of 50% in assessment(s) and 40% in CIT(A)'s

order(s); respectively (supra) in the latter four assessment years. It is therefore apparent that such an approach not giving the due benefit of the alleged corresponding business expenses is not sustainable *per se*. The fact also remains that the case now relied upon by the assessee's behest deals with an instance of real estate development business than real estate commission activity carried out in all these six assessment years before us.

6. Learned counsel also fails to dispute that the assessee has not placed on record any voucher of the corresponding instances of expenses and details pertaining to the alleged suppressed gross receipts. Be that as it may, there can be hardly any dispute that the entire receipts derived in the course of the assessee's commission agent business also requires expenses for market presence and public relations etc.

7. We therefore deem it appropriate in the given facts and circumstances that a lump-sum profit element assessment of 30% of the alleged suppressed gross receipts in all these six assessment years would be just and proper with a rider that the same shall not be taken as a precedent in any other assessment year. The Assessing Officer is directed to finalise consequential computation as per law. This first substantive ground in all these assessment years and sole issue in ITA No.671/Hyd/2018 and 1886/Hyd/2017 are partly accepted in foregoing terms.

8. The assessee's identical second issue in AYs.2009-10 and 2010-11 challenge correctness of both the lower authorities' action disallowing 50% of the miscellaneous expenses. Both the learned representatives fail to dispute that such an estimation cannot be agreed with in entirety as the assessee has to place on record all the corresponding evidence and the Assessing Officer as well as the CIT(A) have not pinpointed the specific defaults in the corresponding details. We therefore deem it appropriate to lumpsum disallowance of 25% will meet the ends of justice in both these assessment years under the relevant heads. The same shall also not be taken as a precedent in any other assessment year. The Assessing Officer is directed to finalise consequential computation. The assessee's former two appeals ITAs 1883/Hyd/2017 and 1884/Hyd/2017 for AYs.2009-10 and 2010-11 are partly allowed in above terms.

9. We now advert to AYs.2012-13 and 2014-15 raising the second issue of other commission income additions of Rs.1,42,980/- and Rs.3,60,720/-; respectively. Learned counsel is fair enough in not pressing these two grounds. Keeping in mind smallness of the amounts involved. The assessee's appeal ITA No.1887/Hyd/2017 for AY.2014-15 is partly allowed in foregoing very terms.

10. We are now left with AY.2012-13 involving assessee's appeal ITA No.1885/Hyd/2017. Its third substantive ground raised herein seeks also reverse both the lower authorities' action adding alleged unexplained investment of Rs.13,40,626/- in the course of assessment as upheld in the

CIT(A)'s order. Learned counsel is fair enough in not disputing the addition in this case in principle. His only case is that the both the Assessing Officer and the CIT(A) ought to have considered the assessee's case for granting telescoping benefit in view of the earlier years' income assessed. This clinching aspect has gone un rebutted from departmental side. We therefore direct the Assessing Officer to consider the assessee's telescoping claim as per law. This appeal ITA No.1885/Hyd/2017 is also accepted in part in above terms.

11. All these assessee's appeals are partly allowed in above terms. A copy of this common order be placed in the respective case files.

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

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 03-02-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1. Shri Rachakatla Yadagiri, C/o.B.Shanthi Kumar, Advocate, 111, Taramandal Complex, 5-9-13, Saifabad, Hyderabad.

2. The Income Tax Officer, Ward-15(2), Hyderabad.

3. CIT(Appeals)-7, Hyderabad.

4. Pr.CIT-7, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.