

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

S.No.	ITA No.	AY	Appellant	Respondent
1 to 3	95 to 97/H/ 2018	2012-13 to 2014-15	Sampada Homes, Hyderabad.  PAN – ABXFS 4853 M	Asst. Commissioner of Income-tax, Central Circle – 2(3), Hyderabad
4 to 6	236 to 238/H/ 2018	-do-	Asst. Commissioner of Income-tax, Central Circle – 2(3), Hyderabad	Sampada Homes, Hyderabad.  PAN – ABXFS 4853 M

Assessee by : Shri K.A. Sai Prasad  
Revenue by : Shri K. Gopala Krishna

Date of hearing : 26/07/2018  
Date of pronouncement : 07/09/2018

**ORDER**

**PER BENCH.:**

These are the cross appeals filed by the assessee as well as revenue directed against the orders of CIT(A) – 12, all dated 28/11/2017, Hyderabad for AYs 2012-13 to 2014-15. As identical issues are involved in these appeals, they were clubbed and heard together and, therefore, a common order is passed for the sake of convenience.

ITA Nos. 95 to 97/Hyd/2018 by the assessee.

2. Brief facts of the case, as taken from AY 2013-14, are, a search and seizure operation u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was conducted in the case of one of the partners Sri Kaithi

Damodar Reddy, on 24/12/2014. During the course of search operation, incriminating materials belonging to the assessee firm were found and seized. Satisfaction Note was duly recorded by the AO. Notice u/s 153C of the Act dated 21/10/2016 was issued and served on the assessee. In response to the notice, the assessee filed its return of income for AY 2013-14 on 18/11/2016 admitting total income of Rs. 19,44,350/- comprising of only business income. Accordingly, notice u/s 143(2) was issued and duly served on the assessee.

2.1 In this appeal, AO quantified the undisclosed income in the AYs 2012-13, 2013-14 and 2014-15 to the extent of Rs. 18,75,85,000/-, as such, there is no dispute on the above turnover quantified by the AO. However, AO gave credit to the extent of sale value disclosed as per the agreement while registering Villas to the extent of Rs. 5,77,27,500/-. For this AY i.e. 2013-14, the turnover quantified by the AO Rs. 8,88,10,000/- and AO allowed the sale value as per the agreement to the extent of Rs. 2,07,63,500/-

2.2 Assessee appealed against the above quantification of undisclosed turnover by the AO overlooking the turnover disclosed in the return of income, which has two parts, viz. a) sales and b) contract receipts for the constructions of Villas to the extent of Rs. 3,76,56,378/-. Further, AO treated the whole undisclosed sales as income of the assessee. Against the above two issues, assessee preferred an appeal before the CIT(A).

3. The CIT(A) dismissed the grounds raised by the assessee with regard to quantification of the suppressed turnover and with regard to treatment of suppressed turnover as income of the assessee, he partly allowed the ground raised by the assessee and quantified @ 40% as income of the assessee by relying on the decision of the Hon'ble MP High Court in the case of CIT Vs. Sharda Real Estate (P) Ltd. 99 DTR 100.

4. Aggrieved with the above order, assessee as well as revenue are in appeal before us raising the following grounds of appeal:

4.1 The assessee has raised the following grounds of appeal, which are common in the three AYs under consideration, except the quantum of addition:

*"1. The learned First Appellate Authority is not justified in confirming the action of the Assessing Officer in estimating the suppressed turnover at Rs.74,00,000.*

*2. The learned First Appellate Authority failed to appreciate the fact that the entire assumption of suppression made by the Assessing Officer is based on assumptions and presumptions.*

*3. Without causing prejudice to the above ground.*

*a. In the facts and circumstances of the case, the learned First Appellate Authority is not justified in directing the Assessing Officer to adopt 40% of the suppressed turnover as income ignoring the appellants claim that the net profit element in the estimated undisclosed turnover is a small percentage.*

*b. The Learned First Appellate Authority is not justified in directing the Assessing Officer to estimate the net profit at a very high figure of 40% of the finally computed undisclosed turnover.*

*4. The appellant craves leave to add amend or alter any of the grounds at the time of hearing of appeal."*

4.2 The revenue has raised the following grounds of appeal, which are common in three AYs under consideration:

*"1. Whether on the facts and circumstances of the case, and in law, the Id. CIT(A) right in treating the "Suppressed Income" on sale of plots as quantified by the AD on the basis of seized material as "Suppressed Turnover"*

*Whether on the facts and circumstances of the case, and in law, the id. CIT(A) erred in restricting the income at 40% of the undisclosed receipts without giving any factual basis which could justify the deduction of 60% allowed against such suppressed receipts?*

3. *Whether on the facts and circumstances of the case, and in law, the Id. CIT(A) erred in not appreciating that all the expenses and costs related to the undisclosed receipts are already factored-in in the regular books of account?*

4. *Whether on the facts and circumstances of the case, and in law, the Id. CIT(A) was correct in deleting the addition made on account of unexplained investment in land ignoring that the assessee failed to explain the sources of investment in land which was a part of work in progress on which villas were constructed for which suppression of the income was quantified by the AD on the basis of seized material?*

5. *Whether on the facts and circumstances of the case, and in law, the Id. CIT(A) was correct in holding that the sources are self-evident when the land is reflected in balance sheet without appreciating the fact that the land in balance sheet is different from the land in question ?*

5. *Whether on the facts and circumstances of the case, and in law, the Id. CIT(A) was correct in holding that the sources are self-evident when the land is reflected in balance sheet without appreciating the fact that the land in question has already shown as consumed in P&L account and it has no relation with the land shown in balance sheet?*

7. *Whether on the facts and circumstances of the case, and in law, the Id. CIT(A) was erred in not appreciating that payments towards the land was made through various Demand Drafts, the sources of such demand drafts are clearly not explained by the assessee either before the AD or before the CIT(A), it being the first year of business?*

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

5. Ld. AR of the assessee referring to the facts sheet filed before us submitted that assessee has accepted the turnover found during the search and seizure, however, AO has given credit to the extent of sale value registered in the documents and failed to appreciate that assessee has declared turnover in the return of income as sales to the extent of Rs. 1,46,03,000/- and contract receipts to the extent of Rs. 2,30,53,378/-. He submitted that the method adopted by AO is not proper as assessee has already declared the relevant turnover, which

includes contract receipts and these receipts are directly relating to the sales of Villas, which is the main business of the assessee. He, therefore, submitted that the actual difference of turnover is to the extent of Rs. 5,11,53,622/-. He prayed that this aspect should be upheld as Id. CIT(A) has not adjudicated on this ground raised by the assessee during first appellate proceedings. Further, he submitted that Id. CIT(A) has determined the profit @ 40%, which is not a normal profit of any industry, for that matter, even the real estate industry also does not show profit of such rate. He relied on the following case law:

1. CIT Vs. President Industries, 258 ITR 654 (Guj.)
2. CIT Vs. Gurubachhan Singh J. Juneja, 255 ITR 509 (Guj)
3. CIT Vs. Sharda Real Estate (P) Ltd., 99 DTR 100 (MP – HC)
4. Jyothichand Bahaichand Sarat & Sons (P) Ltd., Vs. DCIT, 139 ITR 10 (ITAT Pune)
5. ACIT Vs. Archana Trading Co. ITA No. 351/Coch/2011, dt. 28.02.2013
6. DCIT Vs. Have Systems (P) Ltd., 6 ITR (Trib) 346 (Bang.)
7. Jaiprakash Pande Vs DCIT, ITA No. 759/PN/10 (ITAT Pune)
8. ITO Vs. Karthik Poultry Farm, ITA No. 1106/B/2004, dt. 6.11.05

6. Ld. DR objected to the submissions of the Id. AR and submitted that suppressed turnover is nothing but on money which was not brought on record and it does not have any expenditure since assessee has already claimed the expenditure in the return of income and he relied on the orders of AO. He submitted that the whole suppressed turnover should be brought to tax.

7. Considered the rival submissions and perused the material on record. We notice that during search operation a diary was found and as per such diary, assessee has recorded the turnover to the extent of Rs. 8.88 crores whereas assessee has declared in its return of income sales at Rs. 1.46 crores and contract receipts at Rs. 2.31 crores. AO has adopted the value declared in the agreement of sale for registration purpose and not accepted the turnover declared by the

assessee in the return of income. Assessee has filed return of income declaring total turnover of sale and contract receipts to the extent of Rs. 3.77 crores and paid the due tax. Therefore, the turnover already declared by the assessee as per the return of income should be taken as declared turnover. Therefore, we are in agreement with the submissions of the Id. AR that the suppressed turnover should be the difference between the turnover found in the document seized and the turnover declared in the return of income i.e. to the extent of Rs. 5,11,00,000/-. Hence, ground raised by the assessee in this regard is allowed.

7.1 With regard to estimation of income in this line of business, we notice that AO has treated the whole suppressed turnover as suppressed income of the assessee, whereas Id. CIT(A) has estimated the suppressed income @ 40%. We notice that assessee has declared the income @ 5.12% whereas Id. CIT(A) has estimated the income @ 40%. We are in agreement with the CIT(A) that only income should be estimated and not the whole suppressed turnover as income. However, the income estimation should be realistic and based on the trend in the industry. In the case of Sri Narendar Reddy Maddi Vs. ITO in ITA No. 87 /Hyd/2016 for AY 2011-12, on similar issue, the coordinate bench has held as under:

*“6. We have considered the rival contentions and perused the statements placed on record and the case law relied upon. As seen from the order of the AO, the order was an ex-parte order, therefore assessee was not in a position to explain the nature of receipt. Before the Ld. CIT(A), necessary explanation was given. CIT(A) in his order has partly accepted the turnovers to the extent they are accounted for and the balance was treated as unexplained cash credit. Since the nature of receipts are pertaining to the contract works, it is not correct on the part of the authorities to bring to tax the entire receipt as income. As seen from the nature of deposits in the bank accounts, there were corresponding withdrawals also and these seems to be petty cash receipts in the small contract works undertaken by assessee. Hon'ble Gujarat High Court in the case of CIT Vs. President Industries [258 ITR 654] (Gujarat-HC) has held that it cannot be matter of an argument that the amount of sales by itself cannot represent the income of assessee, who has not disclosed the sales. It is the realization of excess over the cost incurred that only forms*

*part of the profit included in the consideration of sales. Similar view was taken in the case of CIT Vs. Gurubachhan Singh J. Juneja [215 CTR 509] (Gujarat-High Court) and CIT Vs. Sharda Real Estate (P.) Ltd., [99 DTR 100] (MP-HC). In the case of Jyotichand Bhaichand Saraf & Sons (P.) Ltd., Vs. DCIT [139 ITD 10] the Co-ordinate Bench at Pune has confirmed that the addition could only be made only to an extent of gross profit earned on an unaccounted / suppress sales and not on the entire sales itself. Similar view was also taken in the case of ACIT, Cir1 Vs. M/s. Archana Trading Co in ITA No. 351 & 352/Coch/2011, dt. 28-02-2013 and also ACIT Vs. Pahal Food in ITSSA No. 42/Hyd/2005, dt. 30-09-2009, ITAT, Hyderabad.*

*6.1. Respectfully following the principles laid down by various High Courts and Co-ordinate Bench decisions, we are of the opinion that the entire turnover cannot be brought to tax as such and there can be reasonable profit estimation on the above amount. Generally income is estimated at 12.5% in the case of big contracts and since assessee has already offered @ 10% profit on the accounted turnover, we are of the opinion that income can be determined on the balance of the turnover at 12.5% of the turnover. AO is directed to do so. Accordingly, assessee's ground are partly allowed."*

7.2 In the above case, we notice that assessee has already declared profit @10% on the accounted turnover, whereas, in the given case, assessee has declared 5.12%. In our considered view, the income has to be realistic and appropriate to the kind of business of assessee. As noted, assessee has declared only 5.12% of the declared turnover as profit. The coordinate bench has opined that in the general scenario income is estimated at 12.5% in the case of big contracts. In the interest of justice and fairness to both the parties, in our considered view, 10% is reasonable and in line with the Villa Projects in the real estate industry. Accordingly, we direct the AO to estimate income @ 10% of the undisclosed turnover. Accordingly, ground raised by the assessee is partly allowed.

8. As the facts and issues are materially identical in the AYs 2012-13 and 2014-15 to AY 2013-14, following the conclusions drawn therein, the appeals in those years are partly allowed.

9. In AY 2012-13, the revenue has raised a ground that the CIT(A) was not correct in deleting the addition made on account of unexplained investment in land, as ground Nos. 4 to 7.

10. Brief facts relating to the said ground are, assessee firm has developed a residential project name 'sampada homes' at manneguda (V), Hayatnagar (M), RR Dist. In an area of 3 acres 10 guntas comprising of independent villas. As per the sale deed document No. 36/2011, dated 30/12/2011, the assessee firm had purchased the above property from 27 vendors for a total consideration of Rs. 30,61,000/-. The AO asked the assessee to furnish the sources of the above investment with supporting evidence. Since the assessee failed to furnish the evidences, the AO treated the above amount of Rs. 30,61,000/- as unexplained investment and brought the same to tax.

11. Before the CIT(A), the assessee, inter-alia, contended that the addition made is not valid legally and even on merits since the entire land cost is duly recorded in the books and balance sheet, therefore, the addition made is unjustified.

12. The CIT(A) deleted the addition made by the AO by observing as under:

*"8.3 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. It is seen that the Assessing Officer has made the addition of Rs.30,61,000/-, by simply stating that the "sources of above investment" were not explained. No discussion is made regarding the land of Rs.67.96 lacs reflected in the Balance-Sheet. As rightly pointed out by the AR, the sources are self-evident, when the land is reflected in the Balance-Sheet, which forms a part of the Return of Income filed by the appellant. Neither does the assessment record show that this issue was even raised and confronted to the assessee during assessment proceedings. The addition made by the AO, found to be baseless and without any justification, is therefore ordered to be deleted. Ground No.5 related to this issue is allowed."*

13. Ld. DR relied on the order of AO, while, the Id. AR of the assessee submitted that the AO is not justified in making any addition in an assessment u/s 143(3) rws 153C without reference to any

seized material with regard to assessments which have reached finality. For this proposition, he relied on the following cases:

1. Cargo Global Logistics Ltd. Vs. DCIT, 137 ITD 287 SB
2. DCIT Vs. Lingam Tulasi Prasad 49 ITR (T 218) (Hyd ITAT)
3. Kabul Chawla 380 ITR 573 (Delhi)

13.1 Further, Id. AR submitted that since the assessee had already filed its return of income for the AY 2012-13 in the regular course much before the date of search, the AO without referring to any part of the seized material is not justified in making an addition of Rs. 30,61,000/- without giving any further details. He submitted that the document referred to by the AO is only part of the total land purchased by the assessee.

14. Considered the rival submissions and perused the material on record. Since no incriminating material was unearthed during the search regarding the purchase of the above land, no addition could have been made to the income already assessed u/s 143(3) of the Act, as held by the Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla (supra). Even the CIT(A) held that when the land is reflected in the balance sheet, which forms a part of the return of income filed by the assessee, the sources are self-evident. He further held that neither does the assessment record show that this issue was even raised and confronted to the assessee during the assessment proceedings. We, therefore, uphold the order of CIT(A) on this issue and dismiss the grounds raised by the revenue in this regard.

15. In the result, the revenue appeals are dismissed and assessee's appeals are partly allowed.

Pronounced in the open Court on 7<sup>th</sup> September, 2018.

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 7<sup>th</sup> September, 2018

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Copy to:-

- 1) *Sampada Homes, C/o Ch. Parthasarathy & Co., 1-1-298/2/B/3, 1<sup>st</sup> Floor, Sowbhagya Avenue, St. No. 1, Ashoknagar, Hyderabad – 500 020.*
- 2) *ACIT, Central Circle – 2(3), Aayakar Bhavan, 6<sup>th</sup> Floor, Basheerbagh, Hyderabad – 500 004*
- 3) *CIT(A) – 12 Hyderabad.*
- 4) *Pr. CIT (Central), Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*