

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

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

I.T.A. No. 980/HYD/2019

Assessment Year: 2016-17

Lal Construction Company, SECUNDERABAD [PAN: AAAFL8349R]	Vs	The Deputy Commissioner of Income Tax, Circle-10(1), HYDERABAD
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(Appellant)

(Respondent)

For Assessee	:	Shri S.Rama Rao, AR
For Revenue	:	Shri K.N.Suresh Babu, DR

Date of Hearing	:	12-10-2020
Date of Pronouncement	:	12-10-2020

ORDER

PER Smt. P. MADHAVI DEVI, J.M. :

This is assessee's appeal for the AY.2016-17, directed against the order of the Commissioner of Income Tax (Appeals)-6, Hyderabad, dated 29-03-2019.

2. Brief facts of the case are that the assessee-firm filed its return of income for the AY.2016-17 on 20-09-2016, admitting total income of Rs.13,04,910/-. During the assessment proceedings u/s.143(3) of the of the Income Tax Act [Act], the Assessing Officer (AO) noticed that there is a difference between the total receipts offered to tax by the assessee and

the receipts reflected in Form-26AS. The AO after hearing the assessee, considered the turnover as per Form-26AS as the gross receipts of the assessee and estimated the Net Profit @8% of such turnover and brought it to tax.

3. Aggrieved, the assessee filed an appeal before the CIT(A), who has enhanced the income of the assessee. However, it is the case of the assessee that before enhancement of the income, the CIT(A) has not given any notice to the assessee. Accordingly, the assessee has raised the following Grounds:

“1) The order of the learned Commissioner of Income Tax (Appeals) is erroneous both on facts and in law.

2) The learned Commissioner of Income Tax (Appeals) erred in enhancing the income by an amount of Rs.24,26,668/- without providing opportunity to the appellant and without issuing show cause notice.

3) The learned Commissioner of Income tax (Appeals) erred in rejecting the accounts drawn by the appellant.

4) The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that the total sales and the other operating revenues amounted to Rs.33,87,552/-.

5) The learned Commissioner of Income Tax (Appeals) ought to have considered the reconciliation made between the figures obtained in Form 26AS and the turn over admitted in the profit and loss account and ought to have held that no addition can be made.

6) The learned Commissioner of Income Tax (Appeals) ought to have seen that the difference is on account of the admission of income for the assessment year 2015-16 and, therefore, ought to have held that no addition on account of difference is taxable.

7) The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that the turnover shown in Form No.26AS of Rs.81,36,140/- was duly reconciled by the appellant, by showing that out of the said amount Rs.52,00,000/- was already assessed to tax for the assessment year 2015-16.

8) The learned Commissioner of Income Tax (Appeals) erred in holding that the difference of Rs.52,00,000/- is taxable in its entirety and further erred in enhancing the income.

9) The learned Commissioner of Income Tax (Appeals) erred in not considering the Ground Nos. 2,3 and 4 of the Grounds of Appeal agitated before him.

10) Any other ground or grounds that may be urged at the time of hearing.”

4. The case is taken up for hearing on 12-10-2020 through video conferencing and both the parties were heard.

5. On going through the order of the CIT(A), we find that at para 6.29 of his order, the CIT(A) has mentioned that the factual position noticed by him which required enhancement of income was brought to the notice of AR and it was proposed to enhance the assessment and in response thereto, the assessee reiterated the argument that the said amount was already declared as ‘work-in-progress’ in the earlier FY.2014-15. From these recordings in the CIT(A)’s order, it is clear that the CIT(A) has not given any notice in writing for enhancement of income to the assessee.

6. Ld.DR also confirmed that no written notice was given to the assessee.

7. Taking the same into consideration, we deem it fit and proper to remit the issue to the file of CIT(A) for re-consideration of the issue in accordance with law and if the CIT(A) feels that the assessment has to be enhanced, then, he shall issue a notice to the assessee and after considering the assessee’s objections, if any, filed by the assessee in writing,

thereafter only, the CIT(A) shall adjudicate the appeal. Needless to mention that assessee shall be given a fair opportunity of hearing.

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

Order pronounced in the open court on 12th October, 2020

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 12-10-2020

TNMM

Copy to :

1.Lal Construction Company, Plot Nos.3 & 4, West Marredpally, Jamnakunj, Secunderabad.

2.The Deputy Commissioner of Income Tax, Circle-10(1), Hyderabad.

3.CIT(Appeals)-6, Hyderabad.

4.Pr.CIT-6, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.