

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH “B”, HYDERABAD**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1240/Hyd/2019
Assessment Year: 2016-17
(THROUGH VIDEO CONFERENCE)**

Dy. Commissioner of Income- tax, Circle – 2(2), Hyderabad.	vs.	Hyderabad Race Club, Hyderabad.
(Appellant)		PAN – AAACH 2773C (Respondent)

Revenue by :	Shri Y.V.S.T. Sai
Assessee by :	Shri K.C. Devdas

Date of hearing :	31/08/2020
Date of pronouncement :	03/09/2020

ORDER

PER M. BALAGANESH, A.M.:

This appeal filed by the revenue is directed against the order of CIT(A) – 2, dated 14/05/2010, Hyderabad for AY 2016-17.

2. Brief facts of the case are that the assessee filed its return of income on 16/10/2016 electronically u/s 139(1) of the IT Act, declaring a total income of Rs. 60,32,76,950/-, which was selected for scrutiny under CASS. Accordingly, notice u/s 143(2) was issued on 15/09/2017 and duly served on the assessee. Subsequently, notice u/s 142(1) was issued requiring the assessee to furnish various details. In response to the said notices, the assessee filed the details as called for.

2.1 During the course of assessment proceedings, the AO observed that the assessee paid an amount of Rs. 924,07,42,059/- to winning punters less than Rs. 5,000/-, on which no TDS was made.

Considering the same as unverifiable expenditure, the AO disallowed 15% of the said amount, amounting to Rs. 138,61,11,309/- and added the same to the returned income.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) following the decision of the ITAT in assessee's own case for AYs 2004-05 to 2011-12 as well as following the decisions of the respective CITs(A) in assessee's own case for AYs 2012-13 & 2014-15, deleted the disallowance made by the AO.

4. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

"1. Whether, on the facts and circumstances of the case, the CIT(A) is correct in following the decision of the Appellate Tribunal in deleting the disallowance of 15% of expenditure on ad-hoc basis without appreciating the fact that there is a lack of evidence supporting the payments allegedly made (upto a limit of Rs. 5,000/-) ?."

2. Any other ground that may be urged during the course of appellate proceedings."

5. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find that the issue in dispute is squarely covered by the decision of the ITAT in assessee's own case for earlier AYs. For the sake of clarity, we reproduce the findings of the ITAT in assessee's own case for the AY 2015-16 vide its order dated 04/12/2019, as under:

"5. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find that the issue in dispute is squarely covered by the decision of the ITAT in assessee's own case for earlier AYs. For the sake of clarity, we reproduce the findings of the ITAT in assessee's own case for the AYs 2012-13 and 2013-14, vide its order dated 14/02/2018, as under:

3. On an appeal, Ld.CIT(A) followed the orders of ITAT in earlier years and decided the issue in favour of assessee. The order of Ld.CIT(A) for the AY. 2012-13 is as under:

"6.2. I have gone through the AO's observations and AR's contentions. It is seen from the assessment order that the AO has made adhoc disallowance of Rs.78,42,48,462/- towards unverifiable expenditure. It is to be mentioned here that in the assessee's own case for the for earlier years, the Hon'ble ITAT, Hyderabad vide orders below held as under:

- i) ITA No 313/Hyd/2011 for the AY 2004-05
 - ii) ITA No 312A-4/d/2011 for the AY 2005-06
 - iii) ITA No.1059/Hyd/2011 for the AY 2006-07
 - iv) ITA No 1425/Hyd/2011 for the AY 2007-08
 - v) ITA No.120/Hyd/2012 for the AY 2008-09
- dt. 16.07.2012

vi). We have considered rival submissions of the parties and perused the material on record On perusal of the documents submitted before under section we find that identical issue of ad hoc disallowances of 15% came up for consideration before the IT Appellate Tribunal. Hyderabad Bench in case of the very same assessee right from the AY 2004-05. the coordinate bench of this Tribunal in a series of orders have decided the issue in favour of the assessee. In the latest order passed for the A Y. 2008-09 in (ITA No. 120/Hyd/2012 dt 16 07.2012. the Tribunal following its earlier order deleted the addition by observing as under -

"5. We have held the arguments of both the parties. perused the record and gone through the orders of the authorities below We find that this issue is covered by the order of the ITAT Hyderabad benches in assessee's own case for A.Y 2007-08 vide in ITA No. 1425/Hyd/2011 vide pages 2 to 11 of the order and at pare 8, the Tribunal held as follows:

We find the earlier order of the ITAT have elaborately dealt with the issue. The Department has not brought anything to show that the facts of the case are any different from that for the AY 2004-05 and 2005-06 covered by the ITAT order The activity of the Assessee is such that they have to deal daily with numerous individuals ill a short span of time when the battings are on. They accept bets and settle the winning amounts to Me winning punters. It will be difficult to maintain complete details about all the persons. The entire payment was through computerized system The payment was made to the person holding the winning ticket The Department has not brought to out notice of any instance of payment when there was no winning ticket In the circumstances. respectfully following the decision of the

coordinate bench in the assessee's own case we delete the ad hoc disallowance of 10% of the total payment for winning bets of less than 2500/- each The appeal of the Assessed on this issue is allowed.

6. Since the issue under consideration is identical to the one decided by the co-ordinate bench in assessee's own case for AY 2007-08 (supra), respectfully following the same. we set aside We order of the Commissioner of Income Tax(A) and allowed this ground of appeal of the assessee.

Since the issue in dispute is squarely covered by the decision of the co- ordinate bench as referred to above. we respectfully follow the same and uphold the order of the Commissioner of Income Tax(A) itr deleting the addition on account of ad hoc disallowance made by the Assessing Officer. The grounds raised are dismissed.

Hence, respectfully following the orders of the jurisdictional ITAT in the assessee's own case for earlier years, the adhoc disallowance of Rs. 63,65,05,974/- is deleted."

Since the issue under consideration is similar, the decision of the CIT(A)-9, Hyderabad holds good for this year also. Accordingly, I direct the AO to delete the ad hoc disallowance of Rs.78,42,48,462/-. As a result, the grounds raised are allowed".

4. After considering the rival contentions, we do not see any reason to interfere with the order of the Ld.CIT(A), who followed the order of ITAT on the issue. Nothing was brought on record to state that facts are different and in the absence of any distinguishing features, the order of ITAT has to be followed. There is no merits in Revenue's grounds."

As the decision of the CIT(A) is in consonance with decision of ITAT and revenue has not brought any contrary decision on this issue, we uphold the same and dismiss the grounds raised by the revenue."

As the decision of the CIT(A) is in line with the decision of the ITAT and the revenue has not brought any contrary decision on this issue, we uphold the order of the CIT(A) in deleting the disallowance of 15% of expenditure on ad-hoc basis made by the AO and dismiss the ground raised by the revenue on this issue.

6. In the result, appeal of the revenue is dismissed.

Pronounced in the open Court on 3rd September, 2020.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 3rd September, 2020.

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Copy to:-

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- 2) *Hyderabad Race Club, 16-10-1/A/1, Race Course Road, Malakpet, ` Hyderabad.*
- 3) *CIT(A) – 2 Hyderabad.*
- 4) *Pr. CIT - 2, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*