

**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. 957/Hyd/2016
Assessment Year: 2011-12
(THROUGH VIDEO CONFERENCE)**

Andhra Pradesh Tourism Development Corporation Ltd., Hyderabad.	vs.	Dy. Commissioner of Income- tax, Circle – 1(1), Hyderabad.
---	-----	---

PAN – AADCA 9817 H

(Appellant)

(Respondent)

**ITA No. 917/Hyd/2016
Assessment Year: 2011-12
(THROUGH VIDEO CONFERENCE)**

Dy. Commissioner of Income- tax, Circle – 1(1), Hyderabad.	vs.	Andhra Pradesh Tourism Development Corporation Ltd., Hyderabad.
---	-----	---

PAN – AADCA 9817 H

(Appellant)

(Respondent)

Assessee by	:	Shri S. Rama Rao
Revenue by	:	Shri YVST Sai

Date of hearing	:	01/09/2020
Date of pronouncement	:	03/09/2020

ORDER

PER M. BALAGANESH, A.M.:

Both these appeals are cross appeals filed by the Assessee as well as revenue are directed against the order of CIT(A) – 1, dated 23/03/2016, Hyderabad for AY 2011-12.

2. The only issue to be decided in the appeal of the assessee is whether the Id. CIT(A) was justified in estimating the income of the

assessee @ 25% of gross receipts after rejection of books of account. While, the interconnected issue involved in the revenue's appeal is whether the Id. CIT(A) was justified in directing the AO to grant deduction towards depreciation and financial charges when income was estimated @ 25% of gross receipts.

3. We have heard the rival submissions and perused the material on record. We find that the assessee company is engaged in the business of tourism and had filed its return of income for AY 2011-12 on 30/09/2011 (on the due date) admitting the income of Rs. 66,82,010/- under the normal provisions of the Act and Rs. 2,09,72,240/- u/s 115JB of the Act. Later, the assessee filed its revised return of income on 31/03/2013 declaring total income of Rs. 15,33,140/- under normal provisions of the Act and Rs. 2,68,26,857/- u/s 115JB of the Act. Both these returns were admittedly filed without completion of statutory audit of the assessee company. Later, the assessee company completed its statutory audit on 11/02/2014 and filed revised computation of income before the Id. AO, which was not considered by the Id. AO. The Id. AO observed that there was three different figures of gross receipts, which are as under:

Gross receipts as per original return	Rs. 119,54,33,271
Gross receipts as per revised return	Rs. 120,55,15,709
As per audit report	Rs. 122,98,96,653

The Id. AO observed that since three different turnover figures were reflected by the assessee, in the interest of revenue, highest turnover figure should be considered and accordingly computed the estimated income of the assessee @ 25% of such turnover and completed the assessment u/s 144 of the Act determining the total income at Rs. 30,74,74,163/-.

3.1 In the first appeal, the assessee requested the Id. CIT(A) to consider the profits declared as per the audit report dated

11/02/2014. After obtaining the remand report from the Id. AO, the Id. CIT(A) upheld the action of the Id. AO in rejecting the books of account of the assessee and estimating the income @ 25% of the gross receipts. However, he directed the Id. AO that assessee should be entitled for deduction towards interest and bank charges of Rs. 76,53,045/- and depreciation of Rs. 12,86,12,826/- from the estimated income as determined (supra).

3.2 It is not in dispute that both the original and revised returns of income were filed by the assessee without completion of statutory audit of the assessee company and that the figures mentioned thereon were provisional. It is not in dispute that the statutory audit of the assessee company was completed on 11/02/2014. We find that the audited books were indeed furnished before the lower authorities, which were ignored on the pretext that the audit ought to have been completed on or before the due date of filing of return of income u/s 139(1) of the Act. For failure to get the accounts audited, the Legislature provides for separate penal provisions in terms of section 271B of the Act. When the audited books of account were furnished before the lower authorities, the said books cannot be ignored without assigning any reasons and getting rejected and assessee's income determined on an estimate basis.

3.3 The Id. AR before us prayed for remanding these appeals to the file of the Id. AO for denovo adjudication for determination of total income of the assessee based on the audited books of account. Id. DR fairly agreed for the submission of the Id. AR. Hence, we deem it fit and proper to remand these appeals to the file of Id. AO for denovo adjudication for determination of total income of the assessee based on the audited books of accounts in accordance with law after providing reasonable opportunity of hearing to the assessee. Accordingly, the grounds raised by the assessee as well as revenue

in their respective appeals are treated as allowed for statistical purposes.

4. In the result both the appeals of the assessee as well as revenue are allowed for statistical purposes.

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

kv

Copy to:-

- 1) *Andhra Pradesh Tourism Development Corporation Ltd.,
C/o Sri S. Rama Rao, Advocate, Flat No. 102, Shriya's Elegance,
3-6-643, Street No. 9, Himayatnagar, Hyderabad – 500 029.*
- 2) *DCIT, Circle – 1(1), Aayakar Bhavan, Basheerbagh, Hyderabad.*
- 3) *CIT(A) – 1, Hyderabad.*
- 4) *Pr. CIT - 1, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*

S.No	Description	Date	Initis	
1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S./PS
3	Draft proposed & placed before the second Member			JM/AM
4	Draft discussed/approved by second Member			JM/AM
5	Approved Draft comes to the Sr.P.S./PS			Sr.P.S./P.S
6.	Kept for pronouncement on			Sr. P.S./P.S.
7.	File sent to the Bench Clerk			Sr.P.S./P.S
8	Date on which file goes to the Head Clerk			
9	Date of Dispatch of order			