

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

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER**

ITA No.	A.Y.	Appellant	Respondent
125/Hyd/2015	2008-09	The Dy.Commissioner of Income Tax, Circle-3(1), HYDERABAD	Sri H.Suresh, HYDERABAD [PAN: BACPS7997H]
181/Hyd/2015	2008-09	Sri H.Suresh, HYDERABAD [PAN: BACPS7997H]	The Asst. Commissioner of Income Tax, Circle-3(1), HYDERABAD

For Revenue : Shri Rohit Mujumdar, DR
For Assessee : Shri Samuel Nagadesi, AR

Date of Hearing : 04-05-2021
Date of Pronouncement : 13-09-2021

ORDER

PER S.S.GODARA, J.M. :

These Revenue's and assessee's cross-appeals for AY.2008-09 arise against the CIT(A)-II, Hyderabad's order(s) dated 11-11-2014, in case No.0270 / CIT(A)-II, Hyd /2014-15, involving proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case files perused.

2. It transpires at the outset that the Revenue's and assessee's identical sole substantive grievance challenges correctness of the CIT(A)'s action restricting additional income

of Rs.2,90,00,000/- to cash component of Rs.75 lakhs alongwith SRO value of plot and land, amounting to Rs.68,75,000/-; respectively totalling to Rs.1,43,75,000/-.

Relevant facts involved in the instant lis are indeed very brief.

This assessee was admittedly one of the directors in a company M/s.Swadesh Villas Pvt. Ltd. incorporated on 19-04-2006 along with many other co-directors including one Shri R.Sreenivasulu. Both these persons were also partners in a partnership firm in the name and style of M/s.Sree Projects. Both the foregoing concerns had been carrying out real estate development activity. The department conducted a survey action on 26-06-2008 in the foregoing twin entities business premises. The assessee appears got recorded his Section 131 statement therefore on 02-07-2008 offering to admit an additional income of Rs.2,90,00,000/- already comprising of cash amount of Rs.11,11,946/- along with a plot of 8500 sq.yds., and land of 1 acre 6 guntas in Gudur Village, Nagulapally Village, Mahaboobnagar District; respectively.

3. The Assessing Officer noticed during the course of scrutiny that this assessee had admitted NIL income in his return dt.26-09-2008. He therefore went by the assessee's foregoing admission u/s.131 of the Act to make the impugned additional income addition of Rs.2.90 crores. The CIT(A) has granted part relief to him as under:

“For AY.2008-09 the assessee filed nil return of income on 26.09.2008 wherein he admitted gross income of Rs.96,466/- and claimed chapter-VIA deduction of Rs.1,00,000/- and offered total income as Rs.Nil. The Assessing Officer issued show-cause notice

and made addition of Rs.2.90 crores based on the statement given by the assessee on 02.07.2008. The present appeal is filed against such assessment order where the income was assessed at Rs.2,94,16,220/- against the returned income of Rs.Nil.

4.1 The appellant made detailed written submissions which are summarized as under:

(a) That the values mentioned in settlement deed is immaterial as the land was subject matter of G.O.Ms. No.111 dated 08.03.1996 and G.O.Ms. No. 14046/11/2007 wherein the land in catchment areas of Osmansagar which is the source of drinking water to the twin cities of Hyderabad are declared illegal, newspaper article dated 07.03.2011 is enclosed wherein it was stated that several layouts were declared illegal by Government in and around Shadnagar area which includes layouts made by M/s.Swadesh Villas Pvt. Ltd. Copies of G.Os. and newspaper clippings are enclosed.

(b) That the appellant received the following:

(i) Cash of Rs.11, 11 ,946/-.

(ii) 8500 square yards at Gudur Village Kottur Mandal, Mahaboobnagar District i.e. Paris Gold Venture.

(iii) One acre and six guntas of land at Cosmo city-II layout, Nagulapally Village, Farooqnagar Mandai, Mahaboobnagar District.

(c) That the addition made of Rs.2.9 crores is merely based on statement given by Sri R.Sreenivasulu without any corroborative evidence.

(d) A civil suit is pending before the Hon'ble City Civil Court, Hyderabad claiming amount of Rs.66,63,054/-.

(e) As per the CBDT Circular in F.No.286/2/2003 the action of the Officers should be focused on collecting the evidence rather than forcing the assesseees to confess the income in statements recorded.

(f) In statement recorded on 02.07.2008 nowhere the appellant admitted receipt of cash except for an amount of Rs.11,11,964/ -.

(g) post-dated cheques were issued for an amount of Rs.75,00,000/- which were taken back by the mediators.

(h) Filing of civil suit against the other directors is clear evidence that the amount was not received.

(i) The land of 1 acre 6 guntas at Farooqnagar Mandal and 8500 square yards of land at Paris Gold Venture, Gudur Village was

registered in the name of the appellant and his family members or his nominees.

(j) That in the following cases the Hon'ble Courts have held that the statement recorded during survey has no evidentiary value.

- i) Ashok Manilal Thakkar Vs.ACIT (2005) 279 ITR (AT) 143
- ii) S.Khader Khan Son (2008) 300 ITR 157 (Mad)

(k) That the agreement entered into was not honoured by the first party (i.e., Sri R. Sreenivasulu, Sri Shaik Abbas, Sri T. Shashi Kumar and Sri W. Ramana Rao) and the mediators have entered to settle the deal which resulted in lodging the police complaint in Punjagutta Police Station and also the civil case against the other directors.

(l) The Assessing Officer simply believed the statement of Sri R.Sreenivasulu without verifying the source of funds in the hands of Sri R. Sreenivasulu as to how he mobilized such huge amount of cash to make settlement in cash for the cheques taken back.

(m) That the Assessing Officer showed clear bias in rejecting the credible and cogent evidence produced by the appellant about the non receipt of the pending settlement of consideration in lieu of cheques taken back, but accepting a mere statement of Mr.R.Sreenivasulu, who could not provide sufficient funds in bank (when he has made payment in cash to settle the amount in lieu of cheques issued) the credibility of which is highly doubtful even under the test of preponderance of human probabilities and AO who is duty bound to verify the same as to its nature and source committed a clear dereliction of his duty was biased, acted mala fide committed misfeasance and nonfeasance in performing his duties as a quasi judicial authority and passed the impugned assessment based on surmises conjectures and bias, is to be cancelled and necessary relief may be allowed in appeal.

(n) That the statement recorded cannot be the basis for completing the assessment without bringing any corroborative or documentary evidence.

5.1 I have carefully considered the information on record. The company M/s.Swadesh Villas Pvt. Ltd. was formed on 19.04.2006 with 6 Directors and the appellant was one of the Directors with 9% share holding. Due to certain misunderstandings 'amongst the Directors the appellant alongwith Sri G.V. Rajasekhar wanted to come out of the business by transferring their share to the company for an agreed amount of cash and land. The amount of cash and land that fell to the share of the appellant was -

- (a) Cash of Rs.75,00,000/-

- (b) Plot of 8,500 square yards at Paris Gold Venture, Kottur Mandal, Mahaboobnagar District.*
- (c) 1 Acre 6 Guntas of land at Cosmo City - II Layout, Nagulapally Village, Farooqnagar Maridal, Mahaboobnagar District.*

5.2 The Paris Gold Venture was declared illegal by the Government of Andhra Pradesh as the venture was located in catchment of Osmansagar Lake. Plots of 8,500 square yards was registered in favour of appellant or his nominees on 14.02.2007 for an amount of Rs.68,00,0001-. Land of 1 acre and 6 guntas was registered in favor of the appellant on 15.12.2007 for an amount of Rs.75,000/-.

5.3 Having considered the facts of the case, issues for consideration are:

- (i) Whether there is any transfer of shares by the appellant to M/s.Swadesh Villas Pvt. Ltd.?*
- (ii) If there is a transfer of shares, what is the sale consideration to be adopted for computing the capital gains?*

5.4 The provisions of section 2 (47) defined the term 'transfer' read as under :

"transfer", in relation to a capital asset, includes,-

- (i) the sale, exchange or relinquishment of the asset; or*
- (ii) the extinguishment of any rights therein; or*
- (iii) the compulsory acquisition thereof under any law; or*
- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ;] [or]*
- [(iva) the maturity or redemption of a zero coupon bond; or]*
- [(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or*
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.*

[Explanation 1].-For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA]

[Explanation 2.-For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;]

From the preliminary reading of the term 'transfer' as defined in the Act, the appellant is hit by the provisions of section 2(47) (i), (vi) and Explanation 2. Therefore, he received cash and land in lieu of the transfer of shares j for surrendering his interest in the company. Vide the agreement dated 10.12.2007 there was settlement among the Directors by which there was an understanding to pay cash of Rs.75,00,000/- and land of 8,500 sq.yds for surrendering his interest in the company. Therefore the gain on transfer of shares has to be brought to tax under the head capital gains.

5.5 With reference to cash of Rs.75,00,000/- an amount of Rs.11,11,946/- was admitted as received by the appellant. The appellant claims that balance amount of Rs.66,63,054/- is yet to be received, after having gone through the statement of the appellant recorded on 02.07.2008 wherein he was allowed to cross-examine Sri R. Sreenivasulu, I am of the opinion that the appellant did not have much defence except merely denying the contents of impounded document AI SP 103. It appears that as and when the cash was paid by Sri R. Sreenivasulu, the appellant was returning the cheques. Therefore, the entire amount of Rs.75,00,000/- is to be considered for the purpose of computing the capital gains.

With reference to reliance by the assessee in the case of Khader Khan Son (cited supra) it is pertinent to mention that substantial opportunity was granted to the appellant to cross-examine Sri R. Sreenivasulu and from the perusal of the cross examination n it is evident that the appellant failed in his attempt to prove that he did not receive cash over and above Rs.11,11,946 1though much of the details are not brought out in assessment order by the Assessing Officer, there is substantial evidence in the form of impounded material which was used as basis for recording the statement.

5.6 With reference to the value of the land of 8500 square yards, and 1 acre 6 guntas the Assessing Officer is directed to adopt the value as per the registered document as this is higher than the SRO Value.

5.7 Therefore, the capital gains is to be brought to tax for A.Y.2008-09 and the consideration will be, cash of Rs.75,00,000/- plus the registered value of plots & land i.e., Rs.68,75,000/- total amounting to Rs.1,43,75,000/-.

6. In result, the appeal is partly allowed”.

This leaves both the parties aggrieved.

4. We have given our thoughtful consideration to rival pleadings and find no merit in either parties' identical grievance(s). This is for the precise reason that the Revenue cannot be stated to an aggrieved party once the CIT(A) has directed the Assessing Officer to go by the stamp price of the twin immoveable properties received by the assessee in the compromise agreement/settlement deed dt.10-12-2007 with the co-directors as even the corresponding statutory provision i.e., Section 50C also adopts the very price only to be the maximum sale consideration for computing capital gains. We thus decline the Revenue's instant sole substantive grievance as well as the main appeal ITA No.125/Hyd/2015.

5. The final outcome could be no different in the assessee's cross-appeal ITA No.181/Hyd/2015 as well. We make it clear that there is no dispute about the settlement deed dt.10-12-2007 in issue wherein he had agreed to receive cash amount of Rs.1 crore by way of twelve cheques alongwith the twin immoveable properties (supra). This assessee has himself accepted very fairly that he had indeed received the twin land parcels in the settlement deed. His only grievance is regarding the cash component of Rs.75 lakhs only.

Learned counsel vehemently argued that the impugned addition is based on a mere statement recorded u/s.131 of the

Act which carries no evidentiary value in absence of any corroboration. He sought to buttress the point that even a search or survey statement recorded u/s.132(4) and 133 of the Act; respectively, has no significance as per the CBDT's circulars dt.10-03-2003 and 18-12-2014. All these arguments duly stand submitted in the records since the learned lower authorities had duly brought the other co-director Sri Sreenivasulu (supra) for their mutual cross-examination (supra). It is evident therefrom that this taxpayers had surrendered cheques in lieu of cash payment. And also that the corresponding cash receipt(s) and the twin settlement acknowledgment(s) dt.14th March and 11th April, 2008 (pages 32 & 33) duly contained his signatures. Coupled with this, the assessee had duly admitted during cross-examination that had indeed issued the said receipts as well as corresponding acknowledgment; as the case may be. We conclude in these facts and circumstances that the impugned addition of Rs.75 lakhs made in assessee's hands is liable to be affirmed. Ordered accordingly. The assessee's cross appeal ITA No.181/Hyd/2015 is also rejected therefore.

6. We lastly acknowledge that although the instant lis is being decided after a period of 90 days from the date of hearing as per Rule 34(5) of the IT(AT) Rules 1963, the same however, does not apply in the covid lockdown situation as per hon'ble apex court's recent directions dated 27-04-2021 in M.A.No.665/2021 in SM(W)C No.3/2020 '*In Re Cognizance for extension of limitation*' making it clear that in such cases where the limitation period (including that prescribed for institution

as well as termination) shall stand excluded from 14th of March, 2021 till further orders in above terms.

7. These Revenue's and assessee's cross-appeals ITA Nos.125/Hyd/2015 & 181/Hyd/2015 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 13th September, 2021

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

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

Hyderabad,
Dated: 13-09-2021

Copy to :

- 1.The Dy.Commissioner of Income Tax, Circle-3(1), Hyderabad.*
- 2.The Asst.Commissioner of Income Tax, Circle-3(1), Hyderabad.*
- 3.Sri H.Suresh, C/o.Samuel Nagadesi, Chartered Accountant, 408, Sri Ramakrishna Towers, Beside Image Hospitals, Ameer Pet, Hyderabad.*
- 4.CIT(Appeals)-II, Hyderabad.*
- 5.The CIT-III, Hyderabad.*
- 6.D.R. ITAT, Hyderabad.*
- 7.Guard File.*