

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

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

**ITA No. 1218/Hyd/2017
Assessment Year: 2006-07**

Dy. Commissioner of Income-
tax, Circle – 2(2), Hyderabad.

vs. Coromandel International Ltd.,
Secunderabad.

PAN – AAACC7852 K

(Appellant)

(Respondent)

Revenue by : Shri M. Naveen
Assessee by : Shri R. Vijayaraghavan

Date of hearing : 16/04/2018
Date of pronouncement : 27/04/2018

ORDER

PER S. RIFAUH RAHMAN, A.M.:

This appeal filed by the revenue is directed against the order dated 30/03/2017 of CIT(A) – 9, Hyderabad for AY 2006-07.

2. Brief facts of the case are that the assessee filed return of income for A.Y. 2006-07 on 27.11.2006 declaring total income of Rs. 1,18,73,51,151/- under normal provisions and Rs. 1,15,36,32,921/- u/s 115JB of the Act. The return was revised by declaring income of Rs. 1,17,59,31,686/- under normal provisions. During the assessment proceedings, the AO observed that the assessee entered into MOU dated 12.12.2005 with Emmar Hills township (P) Ltd. (EHTPL) for purchase of immovable property in Boulder Hills. Subsequently, on 05.02.2010 a sale deed was entered into for purchase of plot No. B4 admeasuring 1236 sq. yards. The assessee paid an amount of Rs

58,71,000/-. The AO noted that, however, as per charge sheet filed by CBI an amount of Rs. 61,80,000/- was paid in excess of consideration paid as per sale deed. When questioned, assessee told that it has not paid any amount over and above the amounts stated in sale deed. After considering the explanation of the assessee, the AO held that the contention of assessee is not satisfactory and hence the same cannot be accepted. Therefore, an amount of Rs. 61,80,000/- as stated in the charge sheet of CBI is added back to the income of the assessee.

3. Aggrieved with the order of AO, the assessee preferred an appeal before the CIT(A).

4. During the appellate proceedings, it was submitted that similar addition was made in the hands of Sri. G. Mahesh Babu and others. On appeal Hon'ble ITAT vide order dated 27.11.2015 in ITA No. 256/Hyd/2015 held that the addition cannot be simply made based on the charge sheet filed. It is further directed that the Assessing Officer must disclose to the assessee the material/ information on the basis of which the on money payment was quantified. If the Assessing Officer is able to establish on the basis of evidence gathered that the assessee has paid on money then he can make addition u/s 69. On the flip side if there is no evidence available on record to directly link the assessee with the alleged payment of on money, then merely on the basis of the fact that some other buyers have accepted payment of on money no addition can be made. With the above observations, the Hon'ble ITAT remitted the matter to the file of Assessing Officer with a direction to re-decide the issue accordingly. Based In the above decision of the Hon'ble tribunal, it was contended that the facts being the same in the instant case, no addition can be made as there is no evidence available on record to link the assessee with the on money payment.

5. After considering the submissions of the assessee, the CIT(A) held as under:

“5. I have considered the facts of the case and have gone through the assessment order. Assessing Officer stated in the assessment order that the documents, sale deeds and evidences filed by the assessee are verified and found to be in order. However, because according to charge sheet filed by CBI assessee is stated to have made excess payment of Rs. 61.80 lakhs, the addition is made. Assessing Officer did not refer to any evidence linking the assessee to the amount paid. Keeping in view the Hon'ble ITAT directions in the case referred above, it is seen that there is no evidence available on record to directly link the assessee towards payment of on money. Addition cannot be made only because the amount is mentioned in CBI charge sheet. In view of the above and keeping in view the directions of Hon'ble ITAT the issue is remitted to the file of the Assessing Officer for the specific purpose of confronting the assessee with specific evidence if any available on record and decide the issue based on the response of the assessee. If there is no evidence except the charge sheet filed by CBI then The addition would stand deleted. In the result the grounds relating to this addition are treated as partly allowed.”

6. 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 deleting the addition by rejecting the sworn statement u/s 164 of Cr. Pc. ?

2) Whether, on the facts and circumstances of the case, the CIT(A) is correct in deleting the addition made when the recipient has admitted the receipt of cash from the purchaser over the above sale deed value ?

3) Any other ground that may be urged at the time of hearing.”

7. Considered the rival submissions and perused the material on record. As submitted by the Id. AR of the assessee, similar issue came up for consideration before the coordinate bench of this Tribunal in the case of Shri G. Mahesh Babu (supra), wherein the coordinate bench has held as under:

"23. We have considered the submissions of the parties and perused the material on record. It is very much evident from the assessment order that mainly relying upon the material gathered as a result of investigation made during the assessment proceedings of EHTPL, particularly on the basis of statement recorded from Shri T.Ranga Rao, the Assessing Officer has come to the conclusion that the assessee has paid on money to the extent of Rs.1,99,20,000 over and above the recorded sale consideration. Of course, besides the statement of Shri T.Ranga Rao, it is seen that the department has gathered information in exercise of power under S.133(6) from some other buyers, who agreed to have paid on-money towards purchase of plots/villas from EHTPL. It is relevant to note that when the assessee was called upon to explain whether he has paid on-money, he stoutly denied the same and insisted that apart from recorded sale consideration, he has not paid anything more. It is the plea of the assessee before the CIT(A) as well as before us that the Assessing Officer has utilised the material gathered as a result of investigation/enquiry adverse to the assessee without either supplying the same to him or allowing an opportunity to the assessee to cross examine Shri T.Ranga Rao, whose statement primarily formed the basis of the addition. We find that the aforesaid submissions of the assessee are acceptable. It is very much clear from the assessment order that though the Assessing Officer has referred to the information received to suggest that the assessee has paid amount of Rs.1,99,20,000, neither in the assessment order nor even subsequently no material has been brought on record to show what exactly is the information/evidence, which indicated that assessee has paid the on money of Rs.1,99,20,000. Further, the investigation results of CBI as well as statement of Shri T.Ranga Rao which have been followed by way of charge sheets and supplementary charge sheets, though heavily relied upon by the Assessing Officer, but admittedly they were not supplied to the assessee. Even the Learned Departmental Representative accepts the aforesaid factual position. Though in the course of assessment proceedings there is no fetter on the Assessing Officer to conduct any enquiry or investigation as found necessary for ascertaining the real nature of transaction or income, at the same time, it is salutary principle of law that any adverse material gathered by him, which he proposes to utilise against the assessee, must be confronted to the assessee for allowing him an effective opportunity of rebuttal. This is in keeping with the principle of natural justice that no person should be condemned without giving a fair opportunity of hearing. In the present case, though the basis for addition is the statement recorded from Shri T. Ranga Rao, admittedly, the Assessing Officer has neither supplied a copy of the statement to the assessee nor allowed him an opportunity to cross examine him, though the assessee in his letter dated 13.3.2014 has specifically asked for cross examination of Shri T.Ranga Rao. In the aforesaid view of the matter, there is violation of rules of natural justice by the Assessing Officer while making the addition of Rs.1,99,20,000. Therefore, the addition made by the Assessing Officer, on account of alleged payment of on-money, cannot be sustained.

24. *Having held so, it is necessary to examine whether non-compliance of the rules of natural justice in the facts and circumstances of the present case has made the assessment void ab initio, or the Assessing Officer can be asked to decide the issue again after following principles of natural justice, as Shri G. Mahesh Babu, Hyderabad, requested by the learned Departmental Representative. As already stated elsewhere in the order, the learned counsel for the assessee has relied upon the decision of the Hon'ble Supreme Court in the case of Andaman Timber Industries (supra), to plead that not allowing the assessee to cross examine the witness has rendered the assessment order void. However, on a perusal of the said judgment of the Hon'ble Supreme Court it is found to be factually distinguishable. In that case, Hon'ble Supreme Court has initially remitted back the matter to the Tribunal for deciding the issue in one way or the other, after considering the submissions of the assessee. However, it is noticed that the Hon'ble Supreme Court ultimately allowed assessee's appeal because the Tribunal while examining the issue of cross examination of witness has merely observed that even such cross-examination would not have improved the assessee's case. Hon'ble Supreme Court held, as the demand raised against assessee was solely relying upon the statement of witness, denial of cross examination to assessee vitiated the order. Unlike the case of Adaman Timber Industries (supra) in assessee's case statement of Shri T.Ranga Rao is not the only piece of evidence relied upon by the Assessing Officer. It is relevant to note that apart from the statement of Shri T.Ranga Rao, there are other information gathered by the department by taking recourse to S.133(6) as per which some of the buyers of the plots have admitted of having paid on- money. Further, through a process of investigation, CBI has found irregularities in the activities of EHTPL and submitted charge sheet(s). As the statement of S rhi T.Ranga Rao, the entire charge sheet(s) filed by CBI and information gathered by the department through enquiry have not been brought on record before us either by assessee or department, we are unable to examine the extent of assessee's involvement, if at all, in the irregularities alleged by CBI or whether the assessee has also been implicated by the investigation agency or any other person. Therefore, in our view, issue relating to payment of on-money requires to be examined afresh by Assessing Officer after confronting evidence/material sought to be relied upon to the assessee and seeking his response on them. The Assessing Officer must also disclose to Shri G. Mahesh Babu, Hyderabad, the assessee the material/information on the basis of which he has quantified the on-money payment of Rs.1,99,20,000. If the Assessing Officer is able to establish on the basis of evidence gathered that the assessee has paid on- money to the extent quantified by him, then he can make the addition under S.69B. On the flip side, if there is no evidence available on record to directly link the assessee towards payment of on-money, then merely on the basis of the fact that some other buyers have accepted payment of on-money, no addition can be made. With the aforesaid observations, we remit the issue to the file of the Assessing Officer with a direction to re-decide the same afresh in accordance with law, after giving reasonable opportunity to the assessee,*

duly complying with the principles of natural justice. This ground of the assessee is allowed for statistical purposes.”

7.1 When the revenue appealed against the decision of the ITAT before the Hon'ble High Court, the Hon'ble High Court vide its judgment No. ITTA Nos. 208 and 226 of 2016, dated 06/01/2017, upheld the findings of ITAT.

7.2 As the issue under consideration is materially identical to the above case, following the said decision, we uphold the order of CIT(A) as the decision of the CIT(A) is in consonance with the decision of the ITAT and dismiss the grounds raised by the revenue in this regard.

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

Pronounced in the open Court on 27th April, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 27th April, 2018

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Copy to:-

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- 2) M/s Coromandel International Ltd., Coromandel House, SP Road, Secunderabad – 500 003.
- 3) CIT(A) – 9, Hyderabad.
- 4) Pr. CIT - 1, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File